

No. 12131

**In the United States Court of Appeals
for the Ninth Circuit**

**RICHARD E. WOODS, HOUSING EXPEDITER, OFFICE OF THE
HOUSING EXPEDITER, APPELLANT**

v.

**SYDNEY MARK TAPER, HARDING MANOR, INC., WARDLOW
HEIGHTS, INC., AND WARDLOW ANNEX, INC., AP-
PELLEES**

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION**

APPELLANT'S BRIEF

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APPELLANT'S BRIEF

STATEMENT OF JURISDICTION

The Housing Expediter appeals from an order denying his application for a permanent injunction in an action brought pursuant to Section 206 (b) of the Housing and Rent Act of 1947, as amended (50 U. S. C. A. Sec. 1896 (b)), to restrain the eviction of tenants from appellees' housing accommodations. Final judgment in favor of the appellees was entered on October 13, 1948 (R. 129-139). Notice of appeal was filed on November 8, 1948 (R. 141). Jurisdiction of the District Court was invoked under Section 206 of the Act, and jurisdiction of this Court under Section 1291 of the Judiciary and Judicial Procedure Act (28 U. S. C. 1291).

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the applicable statutes and regulations appear in the Appendix.

STATEMENT OF THE FACTS

In the Court below, this case turned upon the interpretation to be placed upon Section 209 (a) (5) of the Housing and Rent Act of 1947, as amended, which provides for eviction of a tenant where the landlord seeks in good faith to recover possession for the immediate purpose of withdrawing the housing accommodations from the rental market, and which "shall not thereafter be offered for rent as such." The first question is whether the Court below was right in holding that a landlord may resort to Section 209 (a) (5) of the Act in order to evict a tenant for purposes of making the accommodations more salable, or for selling them, provided the landlord's agreement of sale prohibits the purchaser from renting the accommodations.

Another question is whether the eviction provisions of the Act of 1947, as amended in 1949, and regulations issued thereunder, now control the disposition of this case. The third question is whether the Court below erred in holding that there were no genuine issues of fact to be tried, and in granting summary judgment in this case.

As the Act stood prior to amendment in 1949, evictions were forbidden so long as the tenant paid his lawful rent (Sec. 209 (a), *infra*, p. 54). Exception

the general rule were contained in six carefully
 fined paragraphs to Section 209 (a).¹

Paragraphs (3) and (5), which are of controlling
 significance here, provided that no action to recover
 possession shall be maintainable unless:

(3) the landlord has in good faith contracted
 in writing to sell the housing accommodations
 to a purchaser for the immediate and personal
 use and occupancy as housing accommodations
 by such purchaser;

* * * * *

(5) the landlord seeks in good faith to re-
 cover possession of such housing accommoda-
 tions for the immediate purpose of withdraw-
 ing such housing accommodations from the
 rental market, and such housing accommoda-
 tions shall not thereafter be offered for rent as
 such * * * .”

Eviction is authorized (1) where the tenant is committing a
 breach (Sec. 209 (a) (1), *infra*, p. 54); (2) where the landlord
 rents the accommodations for himself or where he seeks to sell to
 a cooperative whose membership constitutes not less than 65% of
 the existing tenants (Sec. 209 (a) (2), *infra*, p. 54); (3) where the
 landlord has in good faith contracted in writing to sell to a pur-
 chaser who desires the accommodations for self-occupancy (Sec.
 209 (a) (3), *infra*, p. 55); (4) where substantial conversion or re-
 modeling is desired which could not be done with the tenant in
 possession (Sec. 209 (a) (4), *infra*, p. 55); (5) where the landlord
 seeks to withdraw his accommodations from the rental market
 (Sec. 209 (a) (5), *infra*, p. 56); and (6) where the housing ac-
 commodations have been acquired by a state or political subdivi-
 sion for the purpose of making a public improvement and are
 needed temporarily pending the construction of such improvement
 (Sec. 209 (a) (6), *infra*, p. 56).

Violation of Section 209 (a) is forbidden by Section 206 (a) of the Act, and Section 206 (b) empowers the Housing Expediter to seek injunctive relief against all such violations in any federal, state, or territorial court of competent jurisdiction (*infra*, p. 53).

Appellees are the owners of housing accommodations located in Long Beach, California, and, as such, are subject to the provisions of the Act (R. 3). On July 20, 1948, the Housing Expediter brought three separate actions pursuant to Section 206 of the Act against appellees to restrain them from prosecuting in the state courts of California, eviction proceedings against four tenants living in their housing accommodations, on the ground that these proceedings were in violation of Section 206 of the Act (R. 2, 52, 97). These actions, which were docketed in the Court below as Nos. 8451-PH, 8452-PH and 8453-PH, were consolidated for trial by stipulation into Case No. 8451-PH, and for purposes of this appeal, are to be treated as one case (R. 50-51).

The facts are these. On or about June 3, 1948, the appellees commenced proceedings to evict from the housing accommodations located in Long Beach, California, four tenants (R. 131). These tenants were Lucy A. Heustis, a tenant at the property at 3511 Easy Avenue, Long Beach; Paul R. Moberly, a tenant at 3533 Fashion Avenue, Long Beach; Henry Monkiewicz, a tenant at 3557 Fashion Avenue, Long Beach; and Max Ravnitzky, a tenant at 3733 Easy Avenue, Long Beach, California. The appellees commenced these proceedings by serving notices to quit on each

nant. Each notice to quit provided as follows (R. 47):

This notice is given and served upon you in accordance with the law of California, and with the Housing and Rent Act of 1948, wherein it is provided that eviction is authorized in that the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such.

Investigation of the Housing Expediter disclosed that the appellees were seeking to evict the above-named tenants for the purpose of making the housing accommodations more salable, or for selling them (R. 62, 103, 106). Acting on the ground that Section 9 (a) (5) of the Act did not permit the eviction of tenants for these purposes, these suits were instituted under Section 206 of the Act for injunctive relief (R. 2, 52, 97). Almost simultaneously, an application was made for a preliminary injunction pending the outcome of the case upon the trial on the merits (R. 7-12, 58-60, 102-106). The Expediter's application for a preliminary injunction was granted by Judge Peirson M. Hall on July 27, 1948 (R. 108). In the order for preliminary injunctive relief, Judge Hall found that the defendants had commenced the eviction proceedings for the avowed purpose of making the housing accommodations vacant "in order that the same might be redecorated and thereafter sold to persons who would purchase such housing accommo-

dations for use as their residences” (Finding of Fact 9, R. 12, 111; Finding of Fact 11, R. 69). This finding was in accord with defendants’ answer that they sought to evict the tenants “so as to be in a position to sell said property” (Par. VII of Answer, R. 26–93, 121), and was also in accord with a statement that effect signed by the attorney for the appellants and filed with the Defense-Rental Area Office (R. 60, 104). Judge Hall concluded as a matter of law that the purpose for which the appellees commenced the eviction proceedings and served the notices to quit the premises, did not constitute a proper ground for eviction within the meaning of Section 209 (a) (1) of the Act (Conclusion of Law 1, R. 16, 111–113). Accordingly, Judge Hall entered a preliminary injunction in each case restraining the appellees from evicting tenants except in accordance with the provisions of Section 209 of the Act (R. 19, 73, 114).

After filing answers in each suit, in which the charges of violation were denied (R. 21, 75, 113), appellees moved for summary judgment on the ground that the complaints set forth no cause of action (R. 43). The matter then came on for hearing before Judge Cavanah. After hearing and a consideration of all of the pleadings, affidavits, authorities, and admissions, the Court granted appellees’ motion for summary judgment (R. 129), and entered findings of fact and conclusions of law (R. 129–135).

The Court below found, among other things, that the appellees have filed affidavits alleging that they seek to remove the property from the rental market as such, and that they will not thereafter, so long

ne Act is in effect, offer such housing accommodations for rent as such (Finding of Fact 6, R. 131-132); that the appellees have offered that any decree of the Court contain a condition or provision that so long as the Act remains in effect, appellees will not offer said properties for rental as housing accommodations as such (Finding of Fact 7, R. 132); and that the appellees have offered that the judgment or decree contain a provision or condition that if the housing accommodations are removed from the rental market, and if after such removal, the appellees should sell the properties, that the contract of sale will contain a provision prohibiting the purchaser of the property from thereafter offering to rent, or to rent the housing accommodations, so long as the Act is in effect (Finding of Fact 8, R. 132).

In accordance with these findings, the Court below entered a decree dissolving the preliminary injunction, and granting summary judgment in favor of the appellees. It further decreed that the appellees have the right to evict tenants in accordance with the notice heretofore given by them to the said tenants pursuant to the provisions of Section 209 (a) (5) of the Act; that as long as the Act prohibits the properties involved herein from being rented as housing accommodations, the appellees will not offer or rent them as such; and, in addition, "should the defendants sell any of the properties set forth in plaintiff's complaints, then said agreement of sale shall provide that the purchaser thereof will not place said premises on the rental market to be used as housing accommodations so long as * * * the * * * Act pro-

hibits said premises from being rented or offered for rent as housing accommodations" (R. 138-139) From this Judgment, the Expediter appeals (R. 140)

SUMMARY OF ARGUMENT

I

The original Emergency Price Control Act of 1942 authorized the Price Administrator by regulation to control evictions in order to make the regulation of rents workable and enforceable. The system of eviction control previously embodied in administrative regulations under the Price Control Act was incorporated, with modifications, into the Housing and Rent Act of 1947, as amended. As the Act stood when tried below, evictions were forbidden by Section 209 (a) of the Act so long as the tenant paid his lawful rent. Exceptions to the general rule were contained in six carefully defined subparagraphs to Section 209 (a). Paragraphs (2), (3), and particularly (5) of Section 209 (a) are of controlling significance here. Paragraph (2) specifically allowed eviction of tenants for purposes of sale, where the housing accommodations are to be sold to a cooperative. Paragraph (3) specifically allowed eviction of tenants for purposes of sale, where the landlord has in good faith contracted in writing to sell to a purchaser for his self-occupancy. Paragraph (5) allowed a landlord to evict a tenant where he seeks in good faith to withdraw the housing accommodations from the rental market, and where such accommodations will not thereafter be rented as such.

The Court below held in effect that a landlord could resort to paragraph (5) for eviction of tenants in order to sell the accommodations without, however, complying with the protective requirements of paragraph (3), provided the agreement of sale would contain a provision prohibiting the purchaser from renting the housing accommodations.

The ruling below violates the most elementary principles of statutory construction. Exceptions to the Act must be construed strictly, and may not be extended beyond their express terms. Yet, the construction below imports into the narrow exception contained in paragraph (5), authority to evict tenants and withdraw housing accommodations for purposes of sale, if the contract of sale prohibits renting by the purchaser, even though Congress itself did not see fit to confer that authority in that subsection. The construction below also has the effect of impliedly repealing paragraphs (2) and (3), contrary to the familiar rule that repeal must be explicit. Moreover, the ruling below has the effect of imputing to Congress, an intention to enact meaningless provisions, whereas the law requires that each clause of an Act shall be given effect. In addition, the construction below is bound to impair the effectiveness of the Act.

Evictions go to the very heart of rent control. To construe paragraph (5) as permitting eviction for sale under the conditions provided by the decree below, leaves tenants open to great pressures either of paying unlawful rentals, or being evicted, contrary to the provisions of Section 209 (a). Thus, the ruling below will thwart the purposes of the Act in making rent

control effective. The construction below is also contrary to administrative interpretation of the statute issued shortly after its enactment. This interpretation, while not controlling, is entitled to great weight here.

II

Under amendment in March 1949 of the Act of 1942 and by regulations issued thereunder, landlords are now required to apply to the Housing Expediter for a certificate of eviction before evicting tenants when withdrawal of the accommodations from the rental market is sought. The familiar principle is that subsequent to judgment and before decision by an Appellate Court, a law intervenes and positively changes the rule which governs, the law must be obeyed. Accordingly, the amended law which precisely covers the facts of this kind of case, controls its disposition. (See *Woods v. Durr* (S. Ct.), No. 47, Oct. Term 1948, *per curiam opinion*, April 4, 1949, 17 U. S. L. W. 3298.)

III

The Court also erred in granting summary judgment where the complaint and answer thereto, requests for admissions and responses thereto, and affidavits, established genuine issues of fact to be tried.

IV

The judgment below should be reversed, and the cause remanded with instructions to grant the injunctive relief requested in the complaint.

The Court below erred in holding that withdrawal by a landlord of housing accommodations subject to the Housing and Rent Act of 1947, as amended, for purposes of sale, is a permissible ground for eviction of tenants under Section 209 (a) (5) of the Act, provided the agreement of sale prohibits the purchaser from renting the housing accommodations

The Court below held that withdrawal by a landlord of housing accommodations subject to the Housing and Rent Act of 1947, as amended, for purposes of sale, constituted a permissible ground for eviction of tenants under Section 209 (a) (5) of the Act, provided the agreement of sale barred the purchaser from renting the premises. Contrary to the conclusion reached by the Court below, it is submitted that this construction of the Act must be rejected since:

- a. it is contrary to the plain language of the Act;
- b. it violates many cardinal principles of statutory construction;
- c. it will thwart the purposes of the Act;
- d. it is opposed to the Expediter's official interpretation, which is entitled to great weight here; and
- e. it finds no support in the legislative history of the Act.

These contentions will be discussed in order.

The plain language of Section 209 (a) (5) is opposed to the construction given to it by the Court below

1. The plain reading of Section 209 (a) (5) is opposed to the construction which the Court below gave to that subsection. This subsection provides that no action to recover possession shall be maintainable unless:

the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such.

Under the express provisions of this paragraph, a landlord may evict his tenants only if he intends to withdraw his housing accommodations from the rental market. Of significance is the last portion of that paragraph which reads that "such housing accommodations shall not thereafter be offered for rent as such." The Court below must necessarily have thought that the prohibition upon the landlord in this last sentence is against his subsequent offering of the housing accommodations for rent as such, and not against his sale, and that a sale of the property would constitute its withdrawal from the rental market, provided the agreement of sale prohibited the purchaser from renting the accommodations.

Appellees' construction would require us to interpolate after the words "for the immediate purpose of withdrawing such * * * accommodations from the rental market," the additional words "or for the purpose of selling them provided the sales contract prohibits the purchaser from renting them." Not only the language of the Act, but likewise the difficulty and impracticality of shifting the restrictions of the Act from the seller (landlord) to subsequent purchasers preclude this construction. Even if the agreement of sale bound the purchaser on a contractual basis, there is no legal obligation imposed

by the decree upon the seller (landlord) to enforce this obligation, if the purchaser should breach his agreement. Also, there would be no advantage, financially or otherwise, why the seller should ever want to enforce this part of the agreement, if the purchaser chose to disregard it. Obviously, once the landlord sells his accommodations, it makes no difference to him whether the purchaser occupies the accommodations himself, or whether the purchaser rents the accommodations. The result is that the condition imposed by the decree is an utterly worthless one. For all practical purposes, it makes it possible for the purchaser to rent to a new tenant, as if the condition in the sales contract did not exist. It would leave Section 209 (a) (5) with little meaning if a new owner or a purchaser from him "could offer the property for rent contrary to the terms of the Act" (*Woods v. Cammett*, 80 F. Supp. 636, 639 (D. C. N. H.); *Property Service Company v. Spicknall* (People's Court of Baltimore City), No. 11906-48, decided December 22, 1948, not reported (*infra*, p. 83).

Moreover, the construction of the Act given by the Court below makes it equally possible for subsequent purchasers to rent without restriction, since they are not bound by the original sales agreement. Manifestly, the eviction notice to the prior tenant in which the grounds for eviction were stated, and the sales contract itself, would not have the status of a covenant running with the land, or even be a matter of public record available to subsequent purchasers. How

could we then properly expect subsequent purchasers to be bound by the provisions of Section 209 (a) (5)? As was pointed out in a carefully considered opinion of *Holt v. Loneragan* (Mun. Ct., City of Los Angeles, Cal.), No. 874304 (*infra*, p. 67):

Thus, for example, we would have a common situation arise where one would purchase a house or structure, obviously intended for housing accommodations, standing vacant, with no actual knowledge that the house had been withdrawn from the rental market, with no constructive knowledge even that the premises had been tenant-occupied which could arise by the fact of tenant-occupancy as of the date of purchase of the property, and nothing of record under the recording statutes to put the purchaser on constructive notice of the fact of withdrawal from the rental market. To hold, under such circumstances, that a *bona fide* purchaser for value could subsequent to his purchase be prohibited from renting his property raises in my mind so serious a question of constitutionality that, in accordance with well-established canons of interpretation, such a construction should be avoided.

Nor would it be feasible to require the landlord through injunctive process to place in any deed conveying the property, a covenant against renting the property for housing accommodations. The restraint at most would bind only parties to the suit and, in addition, "even the partial remedy afforded by injunction could not be awarded by most courts in which the eviction proceedings would be maintained, for such courts as the Municipal Courts * * *

have no equitable jurisdiction to issue injunctions” (*Holt v. Longergan, supra*). The Supreme Court also has noted that “justice of the peace courts do not, at least ordinarily, have jurisdiction to grant injunctions to prevent further violations of the Act” (*Porter v. Lee*, 328 U. S. 246, 251). As was said in *Woods v. Krizan* (D. C. Minn.), Civil 2945, decided February 15, 1949 (*infra*, p. 62):

Quite clearly, this section contemplates the withdrawal of property from the rental market and the only possible way a landlord can give assurance that such will be the result of his action is for him to retain control of the property after the eviction. When the landlord seeks to evict a tenant while admitting an intent to sell the property, he admits and makes manifest the fact that he will be in no position to carry out the purpose which he avows. It seems a contradiction to say that a landlord can evict for the purpose of withdrawing accommodations from the rental market and then as proof of his good faith allege an intention which shows that he will be in no position to effectuate his avowed purpose. Even if the landlord sells with the honest intention that the property shall not thereafter be offered for rent he is in no position to bind his grantee in this respect.

2. While the Act imposes no restriction upon the landlord’s right to sell to anyone he chooses, “he cannot remove the tenants to do so” (*Woods v. Palumbo*, 79 F. Supp. 998, 1000 (M. D. Pa.); *Holt v. Lonergan, supra*). Congress was not unaware of the possibility of sale, but apparently felt that for the

adequate protection of tenants, eviction for purposes of sale should be authorized only in extraordinary circumstances. Accordingly, subsection (3) expressly provides for eviction for purposes of sale, but only where:

the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser.

Thus, in the case of eviction for purposes of a sale, two prerequisites must be met. First, the landlord must in good faith contract in writing to sell the accommodations. Second, the purchaser buying the accommodations must use them for his immediate and personal use and occupancy. In that state, not only is it easier to trace and detect evasion, but also tenants are less likely to move until they are assured that the conditions of paragraph (5) have been fulfilled, thus reducing the possibility of evasion. Although neither of these prerequisites of Section 209 (a) (3) were complied with here, yet appellees obtained the same relief which is afforded by that subsection only to those who do comply. The Court below probably felt that the conditions imposed by its decree were an adequate substitute for the letter of the law, and that with those conditions present, a landlord could rely on Section 209 (a) (5), even though he actually sought relief provided by Section 209 (a) (3). That the Court below was wrong in this respect is shown by this Court's decision in *Fontes v. Porter*, 156 F. 2d 956. There, a price regu-

lation provided a higher price for repairs of used machine tools where the repairman provided a written guaranty, and where it was expressly invoiced as having been guaranteed. The appellant (defendant below) claimed that although he had failed to provide a written guaranty, the tool was in fact guaranteed, and that therefore the letter of the regulation should not be applied. Rejecting this contention as untenable, this Court, speaking through Judge Healy, used words which can aptly be paraphrased to fit the facts of the instant case (at p. 958):

Neither of these requirements was met by appellant. In the absence of compliance he was not entitled to take advantage of the price permitted for rebuilt and guaranteed tools. A holding otherwise would encourage equivocation and evasion.

See, also, *Porter v. Nowak*, 157 F. 2d 824 (C. C. A. 1st); *Baggett v. Fleming*, 160 F. 2d 651, 654 (C. C. A. 10th) which are in accord.

Furthermore, if Section 209 (a) (5) is construed as authorizing eviction for sale, regardless of whether there is a bona fide contract of sale, and a showing that the purchaser intended self-occupancy, it would wholly obviate the need for Section 209 (a) (3), where these two conditions must be met before sale can be had. Few landlords, if any, would resort to subsection (3) and its attendant conditions in order to sell, when they could obtain the same results of sale under subsection (5), free from the conditions present in subsection (3) (*Woods v. Cammett, supra*,

80 F. Supp. at p. 638; *Woods v. Palumbo, supra*; *Holt v. Lonergan, supra*).

And even if it be assumed that subsequent purchasers would be scrupulous in observing the law in this respect, the effect of the decision below would still be that a landlord could evict in order to sell to any purchaser intending to use the house personally, without satisfying the protective requirement of paragraph (3) that there must be a bona fide contract of sale prior to the eviction. A landlord can sell a house more easily if the prior tenant is no longer in possession, and if the purchaser can thereby get immediate occupancy. And, as the *Cammett* and *Lonergan* opinions recognize, he can obtain a better price. These advantages to him enable him to exert greater pressure on a tenant to pay rents above the ceiling. If resistance is offered, the tenant will be aware that the landlord can threaten to evict for purposes of sale in a ready market for vacant accommodations, without the necessity of complying with paragraph (3) by first finding a purchaser.

We do not think that Congress intended this result. Had this been its intention, it could readily have said so when Congress amended the Act of 1947 in 1948 by revising several paragraphs of Section 209. Yet, it did not disturb the wording of paragraph (3) by the deletion or addition of a single word. By leaving subsection (3) intact, Congress demonstrated the plainest intention that subsection (3) provided ample means for eviction of tenants for the purposes of effecting sales of property, and that

no broadening of that section was required for the protection of landlords.

3. Not only would the construction below of subsection (5) nullify subsection (3), but likewise it would make it possible to evade with impunity the new provisions contained in subsection (2), designed to curb the "cooperative housing racket." Subsection (2) of Section 209 (a) of the Act of 1947 authorized recovery of possession by the landlord for his immediate and personal use, and has been construed to include the landlord's sons, daughters, and other close relatives. By amendment in 1948, a new proviso was added to subsection (2) requiring tenants of at least 65% of the dwelling units in any cooperative structure to be stockholders, and entitled by reason of stock ownership to proprietary leases before eviction could be had under this subsection. This provision was inserted in the Act to prevent landlords from forcing tenants to buy their apartments in order to escape eviction (Cong. Rec., p. 1517, Feb. 20, 1948). If we accept appellees' theory that a landlord may evict for purposes of sale regardless of the restrictions contained in subsection (5), then by token of the same reasoning, a landlord need not also comply with the 65% requirements of subsection (2). Hence, by gradual degrees or, for that matter, at once, a landlord could evict tenants for purposes of sale under subsection (5), until a 65% participation of new tenants was finally present. Such attempt was in fact made only recently, but without success (*Woods v. Krizan*, *supra*, opinion at p. 62, Appendix; *Woods v.*

Alexander & Baker (W. D. Mo.), decided February 18, 1949 (*infra*, p. 88)). It does not seem likely that these two sections would have been enacted at the same time if Congress had intended paragraph (5) to supersede the specific restrictions on eviction for purposes of sale in paragraph (2).

Thus, also, if Section 209 (a) (5) may be used to evict for purposes of sale, it "could be employed as a means for putting in possession of the housing accommodations relatives of a class not entitled to the benefits of Section 209 (a) (2)" (*Holt v. Lonergan, supra*).

b. The construction given to Section 209 (a) (5) by appellees violates the most elementary principles of statutory construction

1. Congress took pains in the original Act and in amending the Act in 1948, to place each independent ground for eviction in a separate section. It obviously intended each section to serve a different purpose. In order to accept appellees' construction of the Act, we must impute to Congress an intention to broaden the provisions of one exception in Section 209, by use of another exception. Appellees' contention on this score might possibly be valid if exceptions to a general rule were entitled to a broad or liberal construction. The contrary is the case. One of the general rules of statutory construction is that a proviso or exception in a statute is to be strictly construed, and one who sets up an exception must establish it as being within the words as well as the reason thereof (*Spokane & Inland R. R. v. United*

States, 241 U. S. 344, 350).² The rule of construction of exemptions from remedial legislation was more recently stated by the Supreme Court in *Phillips Company v. Walling*, 324 U. S. 490, 493, as follows:

Any exemption from such humanitarian and remedial legislation must therefore be narrowly construed, giving due regard to the plain meaning of statutory language and the intent of Congress. To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people.

For these reasons, we cannot agree with the construction of the Court below. On the contrary, since Section 209 (a) (5) is an exception to be strictly construed, the Court below was not warranted in rewriting the exception in the guise of interpreting it, and in importing into its restrictive language, the words "withdrawal for the purposes of sale, if the contract of sale forbids the purchaser from renting the housing accommodations," contrary to the familiar principles of statutory construction expressed above.

2. The construction might also be sustainable if we could say that subsection (5) was intended to repeal the provisions of subsection (3) or subsection

² For application of this rule by this Court in its construction of various other statutes, see, *Canadian Pacific Ry. Company v. United States*, 73 F. 2d 831 (C. C. A. 9th); *Reynolds v. Salt River Valley Water Users Assn.*, 143 F. 2d 863 (C. C. A. 9th); *McCauley v. Makah Indian Tribe*, 128 F. 2d 867 (C. C. A. 9th).

(2), which provide for eviction for purposes of sale under specified conditions. But repeal or modification of a statute must be explicit; it is elementary that repeals by implication are not favored (see, *Federal Trade Commission v. A. P. W. Paper Company*, 328 U. S. 193, 202; *United States Alkali Association v. United States*, 325 U. S. 196, 209; *United States v. Jackson*, 302 U. S. 628, 632; *Yeung v. Territory of Hawaii*, 132 F. 2d 374 (C. C. A. 9th)). To work a change in existing law of which Congress is deemed to have knowledge, requires the plainest terms to such effect in the amendatory statute (*Thompson v. United States*, 246 U. S. 547, 551; *Thummess v. Von Hoffman*, 109 F. 2d 291, 292 (C. C. A. 3d)).

In *Woods v. Durr*, 170 F. 2d 976 (C. C. A. 3d) (judgment vacated by Supreme Court April 4, 1949, and case remanded, see *infra*, p. 52, footnote 10), the Third Circuit Court was of the view that these canons of construction did not apply because paragraph (3) was included in Section 209 (a) of the Act as originally enacted, while "paragraph (5) was added to that section by the Housing and Rent Act of 1948." We find no authorities to support this distinction, and significantly, none are cited. That the rule is otherwise is shown by *Liberty National Life Insurance Company v. Read*, 24 F. Supp. 103, 108 (W. D. Okla.), 3 Judge Court, where it is said that in the absence of an irreconcilable conflict:

The provisions of the amendatory and amended acts are to be harmonized if same can be reasonably done so as to give effect to each and every part, and not leave any part inoperative. Where an amendment is subject to two con-

structions, either of which is justified by its language, that is to be adopted which harmonizes all parts in construction.

In accord with the view just expressed is Sutherland, *Statutory Construction*, Section 1934 (3d Ed., 1943), where it is said (at p. 430):

SEC. 1934. *Part of section not changed and provisions added by amendment to be construed together.*—In accordance with the general rule of construction that a statute should be read as a whole, as to future transactions, the provisions introduced by the amendatory act should be read together with the provisions of the original act that were reenacted in the amendatory act or left unchanged thereby, as if they had been originally enacted as one section. Effect is to be given to each part, and they are to be interpreted so that they do not conflict.

3. Appellees' argument might be acceptable if we could say that in leaving subsection (3) intact, together with its conditions of sales to purchasers, and in amending subsection (2) as to include provision for sale in cooperative cases, Congress merely intended to retain in the Act several meaningless and empty provisions. But the familiar principle is that "a legislative body is presumed to have used no superfluous words in a statute," and that "effect shall be given to every clause and part of a statute" (*Ginsberg & Sons v. Popkin*, 285 U. S. 204, 208; *Platt v. Union Pacific R. Company*, 99 U. S. 48, 58; *Pacific Gas & Electric Company v. Securities & Exchange Commission*, 127 F. 2d 378, 382 (C. C. 9th)).

In the last cited case, this Court said the following in construing the Public Utility Holding Company Act:

If the company's argument were adopted, then the first and third facts enumerated in the statute would be identical, and the third would therefore be surplusage. In view of the rule, that a legislative body is presumed to have used no superfluous words in a statute (*Platt v. Union Pac. R. Co.*, 99 U. S. 48, 58, 25 L. Ed. 424), and the rule that "effect shall be given to every clause and part of a statute" (*Ginsberg & Sons v. Popkin*, 285 U. S. 204, 208, 52 S. Ct. 322, 323, 76 L. Ed. 704) we think the construction of the statute by the Commission which gives effect to the entire statute is correct and must be sustained.

A similar view was expressed by Judge Joyce in *Woods v. Krizan*, *supra*, where a landlord sought to evict tenants under Section 209 (a) (5) in order to sell his accommodations to tenants as a cooperative:

I think paragraph 3 of 209 (a) has just as much importance as the paragraphs numbered 1 to 6, of which it is a part. Why should I disregard paragraph 3 when I think Congress gave it a meaning and importance which I cannot in good conscience disregard.

This conclusion is further aided by another traditional canon of statutory construction that courts will give preference to that construction which does not impair the effectiveness of the legislation (*Sunshine Anthracite Coal Company v. Adkins*, 310 U. S. 381, 392; *Armstrong Paint & Varnish Works v. Nu-Enamel Corp.*, 305 U. S. 315, 333).

Moreover, the opinion of the Court below overlooks the 65% cooperative provisions added by Section 209 (a) (2) of the Act of 1947 by amendment in 1948, at the same time that Section 209 (a) (5) was added. It seems strange that Congress on one hand should have strengthened compliance, by amending the Act in order to combat the cooperative racket by requiring a minimum of 65% participation of tenants in the cooperative before a single tenant could be evicted for purposes of sale, and yet in the same breath have added subsection (5) by which, on the basis of the opinion below, an easy means is made available to deprive every tenant of that protection.

c. The construction of the Act by the Court below would thwart its purposes of making rent control effective

It must be evident that the construction of the Act below would thwart the purposes of making rent control effective. Any breach in the system of control created by the Expediter over evictions has an immediate effect upon his control over rents themselves.³ The Supreme Court recognized the relation of the control of evictions to control over rents during an earlier but similar emergency in *Block v. Hirsh*, 256 U. S. 135, 157-158, when it said: "If the tenant re-

³ "A tenant in the face of a threat of eviction during a period of housing shortage would be under great pressure to acquiesce in some disguised or roundabout arrangement devised by the landlord to circumvent or evade the rent ceiling. And if a tenant who refused to pay more than the maximum rent were subject to eviction, the landlord might readily find, among pressing applicants for housing accommodations, someone who would agree to a surreptitious violation of the regulation" (*Taylor v. Bowles*, 145 F. 2d 833, 834 (E. C. A., 1944)).

mained subject to the landlord's power to evict, the attempt to limit the landlord's demands would fail." More recently, the Supreme Court gave similar recognition to this relationship under the Emergency Price Control Act of 1942. In *Parker v. Fleming*, 329 U. S. 531, 536-537, this Court said: "The Emergency Price Control Act was intended in part to prevent excessive rents in the public interest, and the very anti-eviction regulations under which the Administrator granted the eviction certificate here were specifically designed to prevent manipulative renting practices which would result in excessive rents."

In other decisions under the Emergency Price Control Act of 1942, the Supreme Court has repeatedly given effect to the principle that rent control cannot hope to succeed unless eviction control is equally effective (cf. *Porter v. Lee*, 328 U. S. 246; *Porter v. Dicken*, 328 U. S. 252; *Fleming v. Rhodes*, 331 U. S. 100). The views expressed in this respect are equally applicable to the construction of the specific provisions against unlawful eviction contained in the present Act. Contrary to the view of the Court below, a definite purpose of the Act of 1947, as amended, would be served by keeping a tenant in possession of accommodations which the landlord seeks to withdraw for purposes of sale, even where the sale contract prohibits the purchaser from renting the accommodations. True, the landlord may obtain a higher price for his accommodations with vacant possession than with tenants in them (*Woods v. Cammett*, 80 F. Supp. 636 (D. C. N. H.); *Holt v. Lonergan* (Mun. Ct., City of Los Angeles, Cal.), No. 874,304 (*infra*, p. 67), but

unrestricted eviction for purposes of sale would leave tenants at the complete mercy of unscrupulous landlords. Scarcely any tenant would be safe in his possession under that state of the law, since most housing accommodations in these critical times are worth more when empty than when occupied. With eviction control absent where landlords manifested the slightest intention to sell, the pressure upon the tenants to pay higher than ceiling rentals would be too great to resist, and if they did offer resistance to rent increases, wholesale eviction for purposes of sale would inevitably follow. It requires no vivid imagination to envisage what a "field day" speculators would enjoy under that state of the law, and what opportunity there would be for all kinds of unlawful manipulation. We may not reasonably impute to Congress any intention to bring about such disastrous results.

In view of the experience of the Expediter, and his testimony at the Congressional Hearings (see, *infra*, p. 97) that "evictions go to the very heart of rent control," it seems more reasonable to believe that Congress fully recognized that rent and eviction control are inseparable. In the face of this background of law and experience, it would have been inconsistent for Congress to restrict a landlord from evicting tenants for purposes of obtaining unlawful rents, but leave him free to do so in order "to make a killing" upon the sale of his accommodations.⁴ Such an ab-

⁴ "Of course, price control, the same as other forms of regulation, may reduce the value of the property regulated * * *. His property may lose utility * * * as a consequence of regulation. But that has never been a barrier to the exercise of the police power" (*Bowles v. Willingham*, 321 U. S. 503, 517, 518).

surd result can flow only from an interpretation which is "outside the bounds of normal meaning" (*Addison v. Holly Hill Company*, 322 U. S. 607, 617). "To agree to such a construction would defeat the purposes of this legislation" (*Woods v. Palumbo*, 79 F. Supp. 998 (M. D. Pa.)). This was likewise the conclusion reached in *Woods v. Cammett*, *supra*, where the Court said the following in this connection: "The withdrawing of these accommodations from the rental market, when such withdrawal is not of a permanent character within the meaning and intent of Section 209 (a) (5), but for the purpose of sale, defeats in some measure the aim of rent-control legislation. Under this procedure the property is held vacant for a time uncertain, dependent upon the condition of the real estate market and the consummation of an agreement satisfactory to the buyer and seller, likely producing speculation in vacant housing accommodations" (80 F. Supp. at p. 638).

So, too, in *Property Service Company v. Spicknall* (People's Court of Baltimore City), No. 11906-48, decided September 22, 1948, not reported (*infra*, p. 83), the Court said: "To apply any other interpretation to Section 209 (a) (5) of the Housing and Rent Control Act of 1948 would distort its language and lead to illegal eviction of tenants with subsequent speculation in vacant housing accommodations which the legislative branch of the Federal government had hoped to prevent." This decision was recently upheld by the City Court of Baltimore City, sub. nom, *Fox v. Robertson, et al.*, decided January 11, 1949 by Judge Emery Niles (*infra*, p. 78).

In *Holt v. Loneragan, supra*, which contains an exhaustive discussion of the question, Judge Stevens said: "If, however, Section 209 (a) (5) is construed to permit eviction and withdrawal for the purpose of sale, it would become a ready instrument for a type of eviction not contemplated nor intended by Congress, and which could result only in the utmost confusion when the property reached the hands of subsequent purchasers."

Thus, each of these decisions are in accord with the view of the Expediter that to construe Section 209 (a) (5) as allowing eviction for purposes of sale would seriously impair the object of the statute of protecting the public against inflationary pressures during an acute housing shortage.

d. The construction given to Section 209 (a) (5) by the Court below is also contrary to administrative interpretation of the statute issued shortly after its enactment. This interpretation, while not controlling, is entitled to great weight

The construction of Section 209 (a) (5) by the Court below is also contrary to an official interpretation of the statute issued shortly after its enactment. This interpretation, as amended,⁵ reads as follows (13 F. R. 6317) :

* * * A landlord may not, under section 209 (a) (5), evict a tenant from housing accommodations for the purpose of obtaining vacant possession in order to sell the housing accommodations. Since section 209 (a) (5) is

⁵ Section 209 (a) (5) was included in the amendments of March 30, 1948, effective April 1, 1948. On May 25, 1948, the Office of the Housing Expediter issued Housing and Rent Act Memorandum No. 51, which was amended October 25, 1948 (13 F. R. 6317).

only one of several grounds for eviction under the act, it is clear that it was not intended that this section should broaden or defeat the purpose of limitations placed in the other grounds. It follows, therefore, that since section 209 (a) (3) provides for eviction where "the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser," section 209 (a) (5) may not be used in cases where sales are involved.

That is to say, since a tenant may be evicted for occupancy by a purchaser under section 209 (a) (3), a landlord may not evict under section 209 (a) (5) for the purpose of obtaining vacant possession in order to sell.

While this interpretation of a statute is not binding on the courts, it is, however, entitled to great weight (*Skidmore v. Swift & Company*, 323 U. S. 134, 139-140), particularly since "it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion" (*Norwegian Nitrogen Company v. United States*, 288 U. S. 294, 315; see, also, *United States v. American Trucking Association*, 310 U. S. 534, 549).⁶

⁶ It was likewise the long standing interpretation under the Emergency Price Control Act that eviction for purpose of sale of property was not permissible under Section 6 (b) (1) of the Rent Regulation for Housing issued thereunder (Rent Interpretation 6 (b) (2)—VIII, Pike & Fischer, OPA Rent Service, p. 200: 2165, *infra*, p. 59; Rent Memorandum 6 (b) (1)—VI, *Ibid.*, p. 200: 2151, *infra*, p. 58; see, too, *In the Matter of Josephine B. Wetherford*, 5 OPA Op. & Dec. 3169). Section 6 (b) (1) referred to above provided for issuance of certificates where eviction was not inconsistent with the Act or Regulation (*infra*, p. 57).

e. Contrary to the opinion in *Woods v. Durr*, 170 F. 2d 976 (C. C. A. 3rd), *supra*, the legislative history of paragraph (5) fails to support the construction which the District Court adopted

In *Woods v. Durr, supra*, the Court reached the conclusion that "the legislative history of subsection (5) supports the literal construction that a landlord may resort to Section 209 (a) (5) to evict tenants for purposes of sale. The Supreme Court granted certiorari in this case on February 14, 1949. On April 4, 1949, the Supreme Court vacated the judgment of the Third Circuit in the *Durr* case and remanded the cause to that Court "for a consideration of the effect of Section 209 of the Housing and Rent Act of 1949, approved March 30, 1949, and the eviction regulations of the Housing Expediter issued pursuant thereto." It may be pointed out at this time, however, that careful analysis of each legislative reference referred to in the *Durr* opinion below fails to disclose a single statement expressly or impliedly supporting the view that paragraph (5) allows eviction for purposes of sale.

Considering the legislative references in the order cited by the Court below, we find the following (R. 43-44):

The first reference from Senate Report No. 896, 80th Congress, 2d Session, page 13, refers to Section 302 of the Act, and explains that a similar provision (Sec. 4 (d)) was in the Act of 1942 (see discussion, *infra*, p. 33, on Sec. 302 and Sec. 4 (d)). It then refers to paragraph (5), and merely offers by way of explanation, the words of the statute. Nothing is said in either paragraph, however, in any way suggesting that paragraph (5) may be utilized to evict for sale.

The next reference is from Senate Report No. 896, 80th Congress, 2d Session, page 4, which likewise merely repeats the words of the Act. The substance of Senator Cain's remarks (94 Cong. Rec., p. 1515), which follow, are of like purport. Thus, this Court will search in vain, as we did, for any expression in the legislative history even remotely intimating that landlords may turn to paragraph (5) where they desire to sell. As was said in *Holt v. Lonergan* (Mun. Ct., City of Los Angeles, Cal.), No. 874,304, *infra*, p. 32): "It is true that the legislative history of Section 209 (a) (5) and the clear import of the language in that subparagraph gives the landlord the right, where he is acting 'in good faith,' to withdraw his property from the market while it is tenant-occupied. But nothing that I read in the Committee reports or in Senator Cain's remarks on the floor of the Senate indicates a Congressional intent that a landlord may withdraw his property from the rental market and evict the tenant then in occupancy solely for the purpose of facilitating the salability and to increase the sales price of the premises." In this connection, this Court's observation in *Pacific Gas & Electric Company v. Securities & Exchange Commission*, 127 F. 2d 378, 382, is persuasive when it said:

The company quotes a portion of a committee report, and a part of Senator Wheeler's argument in the debates on the act. While the report sheds no light on the present question, the portion of the argument mentioned definitely supports the company's view. We think such argument must be disregarded because contrary to the plain meaning of the act. *Penn-*

sylvania R. R. Co. v. International Coal Co.,
230 U. S. 184, 198, 199, 33 S. Ct. 893, 57 L. Ed.
1446.

We submit that a fair reading of paragraph (5) in its historical context will likewise demonstrate that it was not meant to have the sweeping effect given it by the Court below.

The original Emergency Price Control Act of 1942 (56 Stat. 23, 767) authorized the Price Administrator by regulation to control evictions in order to make the regulation of rents workable and enforceable (*Taylor v. Bowles*, 137 F. 2d 654, 661-662 (E. C. A.); cf. *Parker v. Fleming*, 329 U. S. 531; *Porter v. Lee*, 328 U. S. 246; *Porter v. Dicken*, 328 U. S. 252). The system of eviction control previously embodied in administrative regulations under the Price Control Act was incorporated, with modifications, into the Housing and Rent Act of June 30, 1947 (61 Stat. 193, 50 U. S. C. App., Supp. I, 1891-1899), as amended by the Act of March 30, 1948 (Pub. Law 464, 80th Cong.). The original predecessor of paragraph (5) was Section 4 (d) of the Price Control Act of 1942 (56 Stat. 28, 50 U. S. C. App., Sec. 904 (d)), which provided that:

Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent.

This proviso was placed in the Act to avoid constitutional difficulty, so that the Act would not be considered as imposing an obligation to sell or rent on a property owner (*Bowles v. Willingham*, 321 U. S. 503, 517). As stated by the Emergency Court of Appeals in *Wilson v. Brown*, 137 F. 2d 348, 352:

In accordance with this statutory provision, the regulation now in question [in 1942] provides that a landlord may evict a tenant whose lease has expired if he "seeks in good faith not to offer the housing accommodations for rent." The landlord is thus free to occupy the property himself, or devote it to some commercial enterprise, or utilize it in any other way. This serves to emphasize that there has been no "taking" of his property in the constitutional sense.

At the same time, there were administrative regulations having the force of law, which protected a tenant against immediate eviction by a landlord intending to sell (Rent Regulation for Housing, Sec. 6 (b), 11 F. R. 12061). The landlord was required to obtain an eviction certificate from the Administrator. Such a certificate could be issued upon a showing that the purchaser had paid at least 20% of the purchase price, and a tenant could not be evicted for from three to six months thereafter, except when administratively authorized in exceptional cases. Obviously, a landlord could not evict a tenant for purposes of selling the property in disregard of this regulation by relying on Section 4 (d), nor could a tenant be evicted without compliance with the certificate provisions of the regulation, even where the accommodations were sold upon a judicial sale (cf. *Porter v. Dicken*, *supra*).

The Housing and Rent Act of 1947 substituted paragraph (3) of Section 209 (a), with its requirement of a prior contract for sale, for the earlier regulations governing eviction for purposes of sale.

The 1947 Act contained no provision similar to that formerly in Section 4 (d) allowing withdrawal of the housing accommodations from the rental market, but this was an inadvertent omission. The omission had been noted by the time the 1948 amendments were under consideration. The Senate Committee, reporting the 1948 bill, stated explicitly (Sen. Rep. 896, 80th Cong., 2d Sess., p. 13) :

While the committee does not believe that the absence of such a provision implies that any person is required to offer housing accommodations for rent, in view of the fact that a similar provision was in the Emergency Price Control Act of 1942 it has been included here *to remove any doubt*. [Italics added.]

This statement was made in connection with the reinstatement in the Act, as Section 302, of a provision almost identical with the language of Section 4 (d) of the 1942 Act.⁷ Paragraph (5) of Section 209 (a), which was added to the Act at the same time as Section 302, was intended to make it clear that a person seeking to use his property as permitted by Section 302, could lawfully evict a tenant for that purpose (see, *Holt v. Lonergan, infra*, p. 14).

The legislative history of the 1948 amendments, substantial portions of which are quoted in the *Durr* opinion and which are discussed at page 22, is completely silent as to whether the new paragraph (5) was meant to apply to sales, and as to its relationship,

⁷ Section 302 reads as follows: "Nothing in this Act or in the Housing and Rent Act of 1947, as amended, shall be construed to require any person to offer any housing accommodations for rent" (Pub. Law 464, 80th Cong., 2d Sess.).

if any, to paragraph (3), which specifically dealt with evictions for purposes of sale. It is hardly believable that if paragraph (5) had been intended drastically to limit, and even in large part to nullify paragraph (3), something in the legislative history would not have at least suggested that the two paragraphs dealt with the same subject matter, or overlapped in some way.

In the absence of any indication to that effect, we think it clear that paragraph (5) and Section 302 together were meant to have the same scope as their predecessor in the Emergency Price Control Act—that is, to make clear for constitutional purposes that an owner of housing accommodations was not obligated to leave it in the rental market. If the accommodations “became vacant either by resort to lawful legal process or by voluntary action of the tenant * * * Section 302 would operate to enable the landlord to decline to re-rent the premises, if he so desired” (*Holt v. Loneragan, supra*; cf. *Wilson v. Brown, supra*; *Bowles v. Willingham, supra*). If, however, a tenant is already in the accommodations, Section 302, as implemented by Section 209 (a) (5), authorizes his eviction so that the accommodations can be withdrawn from the rental market. But, it was not intended to permit the owner to evict for any of the purposes specifically referred to in the other paragraphs of the same section, without complying with the requirements of those paragraphs (see, *Holt v. Loneragan, supra*). This has been the administrative interpretation of the statute since shortly after its enactment (*supra*, p. 29), and this has likewise been the

interpretation given the statute by substantially every court that has had occasion to deal with the problem. *Woods v. Hillcrest Terrace Corp.*, 170 F. 2d 780 (C. C. A. 8th); *Woods v. Cammett*, 80 F. Supp. 636 (D. C. N. H.); *Woods v. Palumbo*, 79 F. Supp. 998 (M. D. Pa.); *Property Service Company v. Spicknall*, No. 11906-48, decided September 22, 1948, by the People's Court of Baltimore concurring *en banc*, affirmed sub. nom., *Fox v. Robertson, et al.* (City Court, Baltimore City, Md.), decided January 11, 1949, by Judge Emery Niles (*infra*, p. 78); *Holt v. Loneragan, supra*; *Poche v. Thibodeaux* (Court of Appeals, Parish of Orleans, State of Louisiana), No. 19069, decided January 25, 1949; *Woods v. Krizan* (D. C. Minn.), Civ. 2945, decided February 17, 1949, by Judge Joyce; *Woods v. Alexander & Baker* (W. D. Mo.), decided February 18, 1949; *Woods v. Weber* (D. C. S. Dak.), No. 609 S. D., preliminary injunction granted February 9, 1949. The last six cases, as well as the *Hillcrest* case, were decided after the *Durr* decision was rendered.⁸

f. *Taylor v. Bowles*, 145 F. 2d 833 (E. C. A.), does not support the ruling below

In *Woods v. Durr, supra*, the Court also stressed the holding in *Taylor v. Bowles, supra*, as supporting the conclusion reached by it. Speaking of this case, the Court below said that it had "placed a

⁸ Contra: *Woods v. Durr, supra*; *Woods v. Seaton* (E. D. Va.), No. 340, appeal submitted in the Fourth Circuit, pending outcome in Supreme Court of *Woods v. Durr*. Judge Bryan initially issued a temporary injunction, but on the basis of the *Durr* decision, reversed his ruling and denied relief.

broad construction upon Section 4 (d) of the Emergency Price Control Act, holding that under its provisions, a landlord might withdraw his housing accommodations from the rental market merely because of dissatisfaction with the existing maximum rents" (R. 45).

We agree that the construction given Section 4 (d) of the Emergency Price Control Act of 1942 by the *Taylor* case is correct to the extent indicated above. The same construction may be extended to Section 302 of the present Act, likewise permitting withdrawal of accommodations from the rental market because of a landlord's dissatisfaction with existing rentals. But, neither Section 302 or its predecessor, Section 4 (d), or the *Taylor* case may be relied on for the proposition that eviction of a tenant is permissible for purposes of making the accommodations more salable.

The question in the *Taylor* case was not whether a person could evict a tenant for purposes of making his accommodations more salable, nor were there involved in that case provisions of eviction control similar to those contained in the Housing and Rent Act of 1947. The facts showed that Taylor had unsuccessfully carried on a running fight with the Price Administrator from the time that rent controls were imposed. Finally, Taylor decided to withdraw his rental accommodations from the rental market, pursuant to Section 4 (d) of the Act, because of his dissatisfaction with existing maximum rentals. Unlike the situation which existed under Section 209 of the Act of 1947, where eviction had been placed in the hands of the courts, when a landlord under the Act of 1942 sought

withdrawal of accommodations from the rental market, he initially had to apply for an eviction certificate from the OPA. Accordingly, Taylor filed an application for such a certificate, asserting that he desired to withdraw the apartment house from the rental market. He satisfied the Regional Administrator that he preferred to leave the apartments vacant, rather than to continue renting them at existing ceilings, and also that if, after the lapse of a temporary period, he did not succeed in securing an upward revision of the ceilings, he intended to dispose of the apartment house. While counsel for the Administrator in oral argument contended that Taylor's past conduct justified the conclusion that the real purpose was to evade the Act and to get more complacent tenants into the building, significantly, the Regional Administrator made no such finding. The Emergency Court said in this connection (at p. 835):

* * * indeed, the findings that he did make are inconsistent with the supposition that the contemplated eviction was merely another maneuver by Taylor to accomplish further violations of the regulation.

Finally, the Emergency Court concluded that regardless of what Taylor's past conduct was, the Act of 1942 did not compel him to continue renting the apartments at the existing level of maximum rents. As the Court said (at p. 836):

Since Section 4 (d) of the Act permits him thus to withdraw the apartment house from the rental market, it necessarily follows that to

grant him the certificate of eviction *on the basis of the facts found by the Regional Administrator*, would not be inconsistent with the purposes of the Act. [Italics added.]

In other words, since both Taylor's application and the findings of the Regional Administrator established that the alleged grounds for eviction were not contrary to the Act, but were pursuant thereto, eviction was permitted. In view of the fact findings mentioned above, that case is manifestly distinguishable from the instant case.

That the ruling of the *Taylor* case should be limited to the specific fact findings which were present in that case is shown by the recent decision in *Woods v. Hillcrest Terrace Corp.*, 170 F. 980 (C. C. A. 8th), as well as by opinions of the Price Administrator (see, e. g., *In the Matter of 215th Place & 43rd Avenue, Corp.*, 5 OPA Op. & Dec. 3155; *In the Matter of Josephine B. Wetherford, Jr.*, 5 OPA Op. & Dec. 3169).

In *Woods v. Hillcrest Terrace Corp.*, *supra*, an action was brought by the Expediter to restrain alleged unlawful evictions, principally on the ground that the landlord was invoking Section 209 (a) (5) of the Act in order to make his accommodations more salable, rather than to withdraw them from the rental market, as required by that subparagraph. The complaint in that case contained three separate counts, the first of which alleged that the defendants were seeking to evict tenants under Section 209 (a) (5) to make the accommodations more salable. The District Court granted defendant's motion to dismiss the

action on the ground that the complaint failed to state a claim upon which relief could be granted. On appeal, the Eighth Circuit reversed the judgment below, remanded the case for trial, and directed the District Court to issue a preliminary injunction pending the outcome upon trial. Concluding that the Federal Court had jurisdiction of the action for the purpose of "effectuating in the public interest, the policy and intent of Congress," the Court, speaking through Judge Sanborn, said the following (170 F. 2d at p. 976):

The appellees are in no position on this appeal to assert that they are seeking in good faith to recover possession of their housing accommodations for the purpose of legitimate sale or to permanently withdraw the accommodations from the rental market, or that they are merely refusing to rent such accommodations (compare *Taylor v. Bowles*, Em. App., 145 F. 2d 833, and *Woods v. Durr*, 3 Cir., 170 F. 2d 976, opinion filed November 8, 1948), since the complaint negatives those assertions.

By its cf. reference to the *Taylor* case, the Eighth Circuit indicated that that case must be limited to its specific facts; by its remand of Count I, the Eighth Circuit indicated its disagreement with the *Durr* opinion.

To sum up the issues: The construction which the Court below gave to the Act is contrary to the plain language used; it ignores familiar rules of statutory construction requiring strict construction of exemptions; it nullifies other portions of the Act and leads to absurd results; it is bound to produce widespread

eviction and unlawful rent increases. Had Congress intended in Section 209 (a) (5) to permit eviction for purposes of sale whenever a landlord found it desirable or necessary to sell under conditions such as are imposed by the decree below, it could easily have so provided. It need not and would not have taken the pains to detail each exception in the language which it employed. But, as the Supreme Court observed in *Addison v. Holly Hill Company*, 322 U. S. 607, 617: "Congress dealt with exemptions in details and with particularity," and accordingly, "exemptions made in such detail preclude their enlargement by implication." This well-settled rule of statutory construction has been widely applied to many peace-time statutes. Without dispute, similar construction should be given to an Act which the Supreme Court in *Woods v. The Cloyd W. Miller Company*, 333 U. S. 138, sustained as a valid exercise of the emergency powers of Congress.

II. Under the Housing and Rent Act of 1947, as amended in 1949, and under the regulation issued thereunder effective April 1, 1949, appellees are required to apply to the Housing Expediter for a certificate of eviction before evicting their tenants. A change in the law between a *nisi prius* and an appellate decision requires the Appellate Court to apply the changed law. (See, *Woods v. Durr* (S. Ct.), No. 476, Oct. Term 1948, *per curiam opinion*, April 4, 1949.)

For the reasons indicated in Point I it is clear that the District Court erred in failing to grant the injunctive relief requested by the complaint. There is, however, another reason why this judgment should be reversed. After the entry of the judgment in the District Court, and while this case was pending

on appeal, Congress, on March 30, 1949, amended Section 209 of the Act⁹ to read as follows:

Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act. (Pub. L. 31, 81st Cong., 1st Sess., Ch. 42.)

The purpose of this amendment was to withdraw from the courts the initial determination as to whether a landlord was entitled to recover possession of controlled housing accommodations, and to vest that determination in the Housing Expediter, as it was in the Price Administrator under the Emergency Price Control Act of 1942 (see, *supra*, p. 33). Pursuant to this amendment to the Act, the Housing Expediter issued the Controlled Housing Rent Regulation, as amended, effective April 1, 1949 (*infra*, p. 100), which requires a landlord who seeks to withdraw his ac-

⁹ "The bill would also give the Housing Expediter authority to issue regulations governing the eviction of tenants from controlled housing accommodations. This will permit uniformity in the operation of eviction provisions, which under existing law are the subject of variation between local courts which results in actions that are discriminatory as between tenants in different local court jurisdictions. The committee believes that restrictions on evictions should be the same in every locality" (Report of Senate Committee on Banking & Currency on Housing and Rent Act of 1949 (81 Cong., 1st Sess., Report No. 127, p. 10).

accommodations from the rental market, to apply to the Expediter for a certificate of eviction.

Applying the provisions of this Regulation to the facts of this case, there can be no question but that appellees must now seek the permission of the Housing Expediter before they proceed to evict any tenants for the purposes of withdrawing their accommodations from the rental market. This is the import of the Supreme Court's *per curiam* decision in *Woods v. Durr, supra*, p. 52, in vacating the judgment of the Third Circuit and in directing that Court to give consideration to the new Act and Regulation. Under established principles, this is the law to be applied by this Court now, "even though it may differ from that which existed when the case was tried below" (*Alameda County v. United States*, 124 F. 2d 611, 616 (C. C. A. 9th)). "A change in the law between a *nisi prius* and an appellate decision requires the appellate court to apply the changed law" (*Ziffrin, Inc. v. United States*, 318 U. S. 73, 78, 63 S. Ct. 465, 469, 87 L. Ed. 621; *Carpenter v. Wabash Railway Company, et al.*, 309 U. S. 23; *Texas Company v. Brown, et al.*, 258 U. S. 466; *Vandenbark v. Owens-Illinois Glass Company*, 311 U. S. 538; *Hines v. Davidowitz*, 312 U. S. 52; *Standard Oil Company of Kansas, et al. v. Angle, et al.*, 128 F. 2d 728 (C. C. A. 5th); *Interstate Hotel Company v. Remick Music Corp.*, 157 F. 2d 744, 749 (C. C. A. 8th)).

A case closely in point is *Standard Oil Company of Kansas v. Angle, supra*. Two suits were involved in this case. There was one by the appellant, Standard Oil Company of Kansas, against A. J. Angle, as

collector of customs for the District of Florida, and other defendants, to compel the delivery of tires imported from Cuba. There was another suit filed by A. J. Angle, as collector of customs for the District of Florida, and others, against the Standard Oil Company of Kansas and others, to restrain the delivery of such tires. In appellant's suit, it was claimed that appellant, as importer, had complied with all customs regulations and requirements, and that it was the mandatory duty of Angle, appellee, to deliver the tires to it. In appellee's suit, and in his defense to the suit brought by the appellant, he claimed that the Office of Price Administration, acting under the authority of the Tire Rationing Regulations, had directed and enjoined him not to deliver the tires except in accordance with authorization from that office, and that he was holding them pursuant to those directions. Appellant, on the other hand, asserted that the Regulations did not extend to, and were not effective to prevent its taking delivery of the tires. The District Court concluded that the delivery which the plaintiff sought was prohibited by the Tire Rationing Regulations and, accordingly, entered a decree dismissing the appellant's suit and restraining his efforts to obtain delivery. The plaintiff, Standard Oil Company of Kansas, appealed. After its appeal was taken, the Regulation was amended in terms which unequivocally declared that appellant was not entitled to the delivery of the tires without authorization by the Office of Price Administration. Accordingly, upon appeal, the appellee urged that even if the

District Court were mistaken in its judgment that the Regulations dealing with tire rationing did not apply when the District Court rendered its judgment, that the judgment in any event should be affirmed upon the authority of the revised regulation. Sustaining this view, the Fifth Circuit Court said the following (128 F. 2d at p. 730):

But if we could agree with appellant that the district judge incorrectly interpreted the order as it existed when the judgment was entered this would not avail it, for by amendment of the regulation, the precise situation here under review was expressly brought within it. In *United States v. The Schooner Peggy*, 1 Cranch 103, at page 110, 2 L. Ed. 49, the Supreme Court in 1801 first gave expression to the governing rule. "It is in the general true that the province of an appellate court is only to enquire whether a judgment when rendered was erroneous or not. But if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. If the law be constitutional, and of that no doubt in the present case has been expressed, I know of no court which can contest its obligation." It has never departed from it. *Vandenbark v. Owens-Illinois Co.*, 311 U. S. 538, 61 S. Ct. 347, 85 L. Ed. 327; *Hines v. Davidowitz*, 312 U. S. 52, 61 S. Ct. 399, 85 L. Ed. 581; *Texas Company v. Brown*, 258 U. S. 466, 42 S. Ct. 375, 66 L. Ed. 721. If then the terms of the original regulations left the question of their coverage in doubt, and we do

not think they did, the amended regulations in terms precisely cover this case, and, under the principle above set out, control its disposition.

In *Carpenter v. Wabash Ry. Company*, 309 U. S. 23, the same principle was applied. There, the petitioner had recovered a judgment against the Wabash Railway Company for personal injuries sustained in the course of his employment by that company. The Wabash Railway then went into equity receivership. The petitioner filed his claim in those proceedings as a priority claim. The master allowed the claim as an unsecured claim without lien or priority. The District Court sustained this disposition, and its ruling in turn was upheld by the Circuit Court of Appeals on the ground that claims for personal injuries by employees were not entitled to priority as operating expenses under the state law or the state court decisions. After the petitioner filed his petition for certiorari, Congress amended Section 77 (n) of the Bankruptcy Act so as to apply to equity receiverships, and as to provide priority for claims for personal injuries to employees of a railroad corporation in an equity receivership. The Supreme Court granted certiorari limited to the question of the right of the petitioner to intervene in the equity receivership proceedings in order to assert priority of his claim. Speaking through Chief Justice Hughes, the Supreme Court said the following (at pp. 26-27):

For the present purpose, we may assume, without deciding, that the determination of the court below was correct upon the record before it and in the light of the law as it then stood.

But it is our duty to consider the amended statute and to decide the question in harmony with its provisions, if found to be applicable. * * *

We are of the opinion that the amended statute is applicable to this proceeding.

In this case, also, the Supreme Court restated the controlling rule to be that declared by Chief Justice Marshall in *United States v. Schooner Peggy*, 1 Cranch 103, 110, which is quoted above.

Based upon the foregoing authorities, it is submitted that the Act of 1947, as amended in March 1949, and the Regulations issued thereunder, must be given binding effect in deciding this appeal, even though passed after the judgment below was rendered.

III. The Court erred in granting summary judgment when the complaint, the answer thereto, requests for admissions, responses thereto, and affidavits, established genuine issues of fact to be tried

The judgment below must also be reversed because the Court granted summary judgment, although the complaint, the answer thereto, requests for admissions, responses thereto, and the affidavits established genuine issues of the fact to be tried.

Paragraph IX of the complaint in No. 8451-PH, dealing with the eviction of Alvin L. Fite, alleged that the appellees had commenced the eviction proceedings and served notice of eviction for the avowed purpose of making the housing accommodations vacant in order that the same might be sold to persons who would purchase them for use as their residences (R. 4). In answer thereto, the appellees admitted

that they had served the notice for the purpose of evicting the tenant, Alvin L. Fite, but denied that there was any bad faith or other ulterior motive on their part, and denied each and every other allegation in Paragraph IX (R. 22). Paragraph X of the complaint alleged that the appellees were evicting tenants from other properties of which they were landlords, by serving similar notices to quit with the same expressed avowed purposes alleged in Paragraph IX (R. 4), and Paragraph XI of the complaint alleged that these acts were in violation of the Housing and Rent Act of 1947, as amended (R. 4-5). In their answer, appellees denied that the acts were in violation of the Act of 1947, as amended. On the contrary, they alleged that said acts were within the provisions of the regulations, and denied each and every other allegation of Paragraphs X and XI (R. 22). Similar allegations were made in the actions filed in No. 8452-PH to restrain the eviction of Lucy A. Heustis, Paul R. Moberly, and Henry Monkiewicz (R. 55), and similar denials respecting these allegations were asserted in the answers filed in those cases (R. 76-77). The same allegation appeared in the complaint filed in No. 8453-PH to restrain the alleged unlawful eviction of Max Ravnitzky (R. 99-100), and appellees asserted the same denial in their answer filed in that case (R. 116-117).

In request for admission No. 10, appellees were asked to respond to the request for admission that they sought to evict a tenant for the purpose of making the housing accommodations vacant in order that the same might be redecorated and thereafter sold

to persons who would purchase such housing accommodations for use as their residences (R. 31). Appellees' response to this request for admission was that they "object to answering the request for admission 10 on the grounds that it is irrelevant, immaterial and not within the purview of the action." Similar requests for admissions were filed in the cases involving the eviction of the other tenants above referred to, and similar responses were made thereto (R. 37).

Thus, there were present, material and genuine issues of fact to be tried in this case. It was clearly not a case which could be disposed of by affidavit. "Judgment on issues of public moment based on such evidence, not subject to probing by judge and opposing counsel, is apt to be treacherous" (*Eccles v. Peoples' Bank*, 333 U. S. 426, 434). On a motion for summary judgment, the question is not how the issue should ultimately be determined, but solely whether there is a genuine issue of fact (*Gifford v. Travelers' Protective Assn.*, 153 F. 2d 209, 211 (C. C. A. 9th)).

It should also be noticed that the appellees moved for summary judgment on the ground that the complaint set forth no cause of action. In their affidavits, appellees claimed that some of the tenants were no longer in possession (R. 45). The Court found that the tenants, Alvin L. Fite and Henry Monkiewicz, voluntarily vacated the premises prior to any proceedings brought against them in connection with the eviction, and that as to said properties, this action was moot (R. 131). The Court was in error in this respect (*Porter v. Lee*, 328 U. S. 246; *Porter v. Merhar*, 160

F. 2d 397 (C. C. A. 6th)). As the Supreme Court said in *Porter v. Lee*, *supra* (at p. 251-252):

We also think the Circuit Court of Appeals erred in holding that the case was moot. The mere fact that the Beevers, in order to comply with the writ of possession, vacated the apartment was not enough to end the controversy. It has long been established that where a defendant with notice in an injunction proceeding completes the acts sought to be enjoined the court may by mandatory injunction restore the *status quo*. *Texas & New Orleans R. Co. v. Northside Belt R. Co.*, 276 U. S. 475, 479. The Administrator, therefore, was entitled to seek a restoration of the *status quo* in this case. See *Henderson v. Fleckinger*, 136 F. 2d 381-382. Moreover, here the Administrator sought to restrain not merely the eviction of Beaver but also that of any other tenant of the landlord as well as other acts in violation of the Regulation. Section 205 (a) authorizes the District Court in its discretion to grant such a broad injunction upon a finding that the landlord has engaged in violations. See *Hecht Co. v. Bowles*, 321 U. S. 321. If the eviction proceeding actually was a violation of the Regulation, then Beaver's vacating the premises was merely the completion of one violation. The issue as to whether future violations should be enjoined was still before the Court and was by no means moot.

From the foregoing, it is manifest that the Court below was in error in granting the appellees' motion for summary judgment.

For the reasons stated above, the judgment of the Court below should be reversed with instructions to grant the injunction prayed for, or in the alternative, the cause should be remanded to the district court for consideration of the effect of Section 209 of the Housing and Rent Act of 1949 and the eviction regulations issued thereunder.¹⁰

Respectfully submitted.

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¹⁰ In *Woods v. Durr*, *supra*, the *per curiam opinion* of the Supreme Court was as follows:

"The motion of the Solicitor General for remand of this case is granted. The judgment of the Court of Appeals is vacated and the cause is remanded to that court for consideration of the effect of Section 209 of the Housing and Rent Act of 1949, approved March 30, 1949, and the eviction regulations of the Housing Expediter issued pursuant thereto." (17 U. S. Law Week 3298.)

APPENDIX

APPLICABLE PROVISIONS OF THE HOUSING AND RENT ACT OF 1947, 61 STAT. 193, 50 U. S. C. APP., SUPP. I, 1891-1899, AS AMENDED BY THE HOUSING AND RENT ACT OF MARCH 30, 1948, PUB. LAW No. 464, 80TH CONG.

SEC. 206. (a)¹ It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204 or otherwise to do or omit to do any act in violation of any provision of this title.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this title, he may make application to any Federal, State, or Territorial court of competent jurisdiction, for an order

¹ This section was amended by section 203, Public Law 464, 80th Congress, to read as provided above. The original section read as follows:

"SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

"(b) Whenever in the judgment of the Housing Expediter any person has engaged in or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

enjoining such act or practice, or for an order enforcing compliance with such provision, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

EVICTIION OF TENANTS

SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

(2)² the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations, or for the immediate and personal use and occupancy as housing accommodations, by a member or members of his immediate family, or,

² This subsection was amended by section 204 (a), Public Law 464, 80th Congress, to read as provided above. The original subsection read as follows:

“(2) The landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations.”

in the case of a landlord which is an organization exempt from taxation under section 101 (6) of the Internal Revenue Code, or the immediate and personal use and occupancy as housing accommodations of members of its staff: *Provided*, That in the case of housing accommodations in a structure or premises owned or leased by a cooperative corporation or association no action or proceeding under this paragraph or paragraph (3) to recover possession of any such housing accommodations shall be maintained unless stock in the cooperative corporation or association has been purchased by persons who are then stockholder-tenants in occupancy of at least 65 per centum of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises; but this proviso shall not apply where such corporation or association acquires or leases such structure or premises after the effective date of the Housing and Rent Act of 1948 pursuant to a contract entered into prior to such date.

(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;

(4) ³ the landlord seeks in good faith to recover

³ This subsection was amended by section 204 (b), Public Law 464, 80th Congress, to read as provided above. The original subsection read as follows:

“(4) The landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of substantially altering, remodeling, or demolishing them and replacing them with new construction, and the altering or remodeling is reasonably necessary to protect and conserve the housing accommodations and cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be

possession of such housing accommodations (A) for the immediate purpose of substantially altering or remodeling the same for continued use as housing accommodations, or for the immediate purpose of conversion into additional housing accommodations, and the altering, remodeling, or conversion cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any conversion planned, or (B) for the immediate purposes of demolishing such housing accommodations;⁴

(5)⁵ the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such; or

(6)⁶ the housing accommodations have been acquired by a State or any political subdivision thereof for the purpose of making a public improvement and are rented temporarily pending the construction of such improvement.

required by Federal, State, or local law for the alterations, remodeling, or any construction planned; or.”

⁴ Sec. 209 (a) (5) of the Housing and Rent Act of 1947 was repealed by section 204 (c), Public Law 464, 80th Congress. Prior to repeal, this subsection read as follows:

“(5) The housing accommodations are nonhousekeeping, furnished housing accommodations located within a single dwelling unit not used as a rooming or boarding house and the remaining portion of which is occupied by the landlord or his immediate family.”

⁵ This subsection was added by section 204 (d), Public Law 464, 80th Congress. See Footnote 4 for repeal of section 209 (a) (5) of the Housing and Rent Act of 1947.

⁶ This subsection was added by section 204 (d), Public Law 464, 80th Congress.

(b) Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided*, That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.

(c)⁷ No tenant shall be obliged to surrender possession of any housing accommodations pursuant to the provisions of paragraph (2), (3), (4), (5), or (6) of subsection (a) until the expiration of at least sixty days after written notice from the landlord that he desires to recover possession of such housing accommodations for one of the purposes specified in such paragraphs.

SEC. 302.⁸ Nothing in this Act or in the Housing and Rent Act, of 1947, as amended, shall be construed to require any person to offer any housing accommodations for rent.

RENT REGULATION FOR HOUSING ISSUED UNDER EMERGENCY PRICE CONTROL ACT OF 1942, AS AMENDED

SECTION 6. Removal of tenant * * *

(b) *Administrator's certificate*.—(1) Removals not inconsistent with Act or regulation. No tenant shall

⁷ This subsection was added by section 204 (e), Public Law 464, 80th Congress.

⁸ This subsection was added by Public Law 464, 80th Congress.

be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the Act of this regulation and would not be likely to result in the circumvention or evasion thereof. Section 6 (b) (1) of the Rent Regulation for Housing, 10 F. R. 11666; 11 F. R. 12061.

RENT MEMORANDUM 6 (B) (1)—VI

Issuance of Certificate Where Landlord Proposes to Withdraw From Housing Use

Prior to Supplementary Amendment No. 7, effective on October 20, 1942, Section 6 (a) (6) permitted eviction where the landlord "seeks in good faith not to offer the housing accommodations for rent." By the amendment this was eliminated from Section 6 (a) (6) and the landlord's remedy now is to petition for a certificate under Section 6 (b) (1). Where the landlord in good faith desires to rent the premises for commercial as distinguished from housing purposes, a certificate should ordinarily be granted. Likewise, where the landlord in good faith desires to withdraw the accommodations from rent, does not propose to sell them, but proposes to leave them entirely vacant, a certificate should ordinarily be granted. However, in such a case the landlord's good faith usually must be substantiated by a serious economic motive indicating that the withdrawal is not temporary and that he does not seek to circumvent or evade the Act or Regulation. Special care should be used to ensure that the landlord's objection is not to dispossess the ten-

ant because the tenant has taken, or proposes to take, action authorized by the Price Control Act or the Rent Regulation.

(Issued October 14, 1942; revised May 15, 1943)
(Pike & Fisher OPA Rent Service Page 200:2151.)

INTERPRETATION 6 (B) (2)—VIII

Eviction for Purpose Other Than His Own Occupancy,
by Purchaser Who Buys After October 20, 1942

1. *Eviction prior to execution of sale contract*

L is renting a house to T. On or after October 20, 1942, L petitions for a certificate under Section 6 (b) (1) of the Housing Regulation on the ground that he wants to evict T in order to sell the house.

The petition will be denied. Eviction of the tenant under these circumstances is inconsistent with the purposes of the Act and the Regulation and is likely to result in the circumvention or evasion thereof. The conditions under which eviction of a tenant is permitted for occupancy by a purchaser are set out in Section 6 (b) (2) of the Regulation. The purposes of this provision require the denial of the petition in the above case. Pursuant to those purposes, a certificate will be issued where L desires to sell the house, only after a contract of sale has been made and the requirements of Section 6 (b) (2) are satisfied (Pike & Fisher OPA Rent Service Page 200:2166).

In the District Court of the United States, District
of South Dakota, Southern Division

Civil Action No. 609 S. D.

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE
HOUSING EXPEDITER, FOR AND ON BEHALF OF THE
UNITED STATES, PLAINTIFF

v.

R. H. WEBER, DEFENDANT

PRELIMINARY INJUNCTION

Plaintiff's motion for a preliminary injunction came on for hearing before this Court on the 7th and 8th days of February 1949, and the Court having taken evidence, listened to argument of Counsel and having made its separate findings of facts and conclusions of law, and being duly advised in the premises;

Now, therefore, it is ordered, adjudged and decreed:

That the Defendant, R. H. Weber, his agents, servants, employees, attorneys, and all persons acting in concert and participation with the Defendant, be, and they are hereby enjoined during the pendency of this suit or until the further order of this Court, from:

(a) Removing or evicting, or attempting to remove or evict, or engaging in any action or course of action the purpose of which is to evict, any tenant from controlled housing accommodations, operating and managed by the said Defendant, located at 500 South Dakota Avenue, Sioux Falls, South Dakota, and commonly known as the Weber Apartments, upon any ground or for any purpose not expressly permitted by the Housing and Rent Act of 1947, as amended, or as hereafter amended, extended or superseded.

(b) Evicting, or taking or continuing and concluding, any steps, proceedings or actions to evict, remove or exclude from possession, any of the tenants of the housing accommodations hereinbefore described, operated and managed by the Defendant, where such steps, proceedings or actions are grounded upon certain written notices to vacate heretofore served upon the said tenants in the month of October, 1948, which said notices state that the landlord has in good faith contracted in writing to sell the housing accommodations to purchasers for the immediate and personal use and occupancy as housing accommodations by such purchasers.

(c) Soliciting, demanding, accepting or receiving any rent in excess of the maximum rent established and prescribed by the Housing and Rent Act of 1947, as heretofore or hereinafter amended, and by the controlled housing rent regulations adapted pursuant to said Act.

(d) Committing any violation of the above act or the Regulations issued thereunder, as heretofore or hereafter amended, extended or superseded.

Dated this 9th day of February 1949.

Enter:

A. LEE WYMAN,
Judge of the United States District Court.

Attest:

ROY B. MARKER,
Clerk.

[SEAL OF COURT]

By C. C. SCHWARZ,
Deputy.

(Indorsed.) Filed Feb. 9, 1949. Roy B. Marker,
Clerk. By C. C. Schwarz, Deputy.

United States District Court, District of Minnesota,
Fourth Division

2945, Civil

TIGHE E. WOODS, HOUSING EXPEDITER, ETC., PLAINTIFF

v.

DANIEL KRIZAN, DEFENDANT

MINNEAPOLIS, MINNESOTA, *February 15, 1949.*

Oral opinion by Judge Matthew M. Joyce. G. Frandle, Reporter.

OPINION

The COURT. In this action the plaintiff seeks a preliminary injunction enjoining the defendant and his agents from evicting any tenant of the housing accommodations described in the complaint upon any ground or for any purpose not expressly permitted by the Housing and Rent Act of 1947, as amended, and particularly expressed in Section 209 (a) of said Act.

A stipulation has been filed between the parties which was in the nature of an agreement as to the facts. Save for a few questions asked by the Court of the defendant yesterday, no evidence was taken. The question before the Court is one of law and a determination and proper application of Section 209 (a), and particularly the proper construction of paragraphs 3 and 5 of said section.

Paragraph 6 of the stipulation reads as follows: "That defendant admits that he is seeking to withdraw the housing accommodations from the rental market and evict the tenant in occupancy from the housing accommodations for the purpose of obtaining vacant possession in order to sell the housing accommodations."

The question then presented is can the defendant when proposing a sale proceed in accordance with the provisions of paragraph 5, Section 209 (a) or must he comply with paragraph 3 of said section. The general rule laid down in Section 209 (a) is that no one may evict any tenant in any court unless the landlord comes within one of the exceptions permitting eviction. There has been much said and much written on the subject before the court. The defendant relies in the main on *Woods v. Durr*, 170 Fed. 2nd, 976. That was a hardship case if there ever was one, and the court said: "The case thus presents the question whether Section 209 (a) of the Housing and Rent Act of 1947, as amended by the Housing and Rent Act of 1948 prohibits an eviction *under the circumstances of this case*. Those circumstances are, as the defendant readily admitted at the hearing, that she desires possession of her property in order that she may be in a better position to sell it to a purchaser who will occupy it as his home. She further asserted, and it was not denied, that the property in question is subject to an overdue mortgage in a substantial amount and that it will be necessary for her to sell in order to pay off the mortgage. There is no suggestion that the defendant's intentions with respect to the property are not entertained in good faith."

The most obvious difference between this case and the Durr case is that here there are 45 tenants who will be affected by the landlord's action. In the Durr case there was a single tenant. However, in any event I disagree with the interpretation of Section 209 (a) (5) adopted by the court in *Woods v. Durr* for the following reasons:

While professing to take the section to mean what it clearly says, the court does not do so. The section provides that a landlord can evict a tenant when he

“seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market and such housing accommodations shall not thereafter be offered for rent as such.”

Quite clearly, this section contemplates the withdrawal of property from the rental market and the only possible way a landlord can give assurance that such will be the result of his action is for him to retain control of the property after the eviction. When the landlord seeks to evict a tenant while admitting an intent to sell the property, he admits and makes manifest the fact that he will be in no position to carry out the purpose which he avows. It seems a contradiction to say that a landlord can evict for the purpose of withdrawing accommodations from the rental market and then as proof of his good faith allege an intention which shows that he will be in no position to effectuate his avowed purpose. Even if the landlord sells with the honest intention that the property shall not thereafter be offered for rent he is in no position to bind his grantee in this respect.

While Section 209 in Paragraph 3 expressly gives the landlord the right to evict a tenant after sale of the property, there is nothing in the section itself which indicates that he shall have the right to evict before and for the purpose of sale, and I do not think this can be properly read into paragraph 5.

In the *Durr* case the court relied greatly upon the legislative history of paragraph (5), but nowhere in that history was it intimated that paragraph 5 was intended to permit an eviction before sale. Furthermore, neither the committee reports nor the statement of Senator Cain gave any indication that paragraph 5 was intended to implement or extend paragraph 3 which permits eviction after sale of the property. The

court in the *Durr* case also pointed to the fact that Section 302 gave assurance that no landlord would be required by the Act to keep his housing accommodation in the rental market and said that paragraph 5 was designed to implement that assurance by making it possible for a landlord whose housing accommodation was in the rental market to withdraw it therefrom. I think the foregoing sentence is an accurate statement of the purpose and consequences of Section 302 and paragraph 5 of Section 209. But to say that paragraph 5 was intended to provide the means by which a landlord could withdraw his property from the rental market with the understanding that such property would not thereafter be offered for rent is not to say that it was intended to provide the means by which the landlord could recover possession for the purposes of sale. I do not think the latter proposition follows from an acceptance of the first. Nor can I find anything in the legislative history, or the language used by Congress, which would warrant such an extension of the meaning of paragraph (5). To the contrary, if the words used in paragraph (5) are given their plain and logical meaning that paragraph is perfectly consistent with the provisions of paragraph (3), which is not true of the construction adopted by the court in the *Durr* case.

Consider for a moment one possibility arising out of the *Durr* case. If a landlord can evict for the purpose of sale, it is clear that the possibility of a violation of Section 209 (a) (5) is thereby increased. This necessarily follows from the fact that a landlord who proposes to sell is in no position to vouch for the intentions of the buyer, and it may well be that the latter wishes to rent the property. In so doing the new owner would be violating the law, and it would then be the duty of the Housing Expediter to stop this

violation. Assuming for the moment that the Expediter could stop a violation by the buyer, the Expediter would be placed in the ridiculous position of enjoining the rental of vacant premises during a period of housing shortage, thereby making more acute a condition the Housing Act was designed, in part, to alleviate.

For this reason, I think Section 209 (a) (5) should be given a restrictive interpretation and that a more substantial showing of good faith should be required than a mere allegation of intent to sell the housing accommodation. Nowhere is there withdrawal of Section 3 by Congress expressed or implied. Surely one restriction in 209 (a) was not put in the law to eliminate another restriction of equal force and purpose. Section 3 was in the law before Section 5 was in it and has remained undisturbed in its original text throughout the various changes and amendments. Paragraphs 3 and 5 can be enforced without destroying each other.

I am of the opinion that in order to have rent controls effective there must be accompanying eviction controls. The restrictions were imposed by Congress. Its objectives and purposes are to be construed and determined by a reasonable interpretation of its language. It devoted a whole division of the Act to the very important subdivisions labeled "Eviction of Tenants," and known as Sections 209 (A), (B), (C). I think paragraph 3 of 209 (a) has just as much importance as the paragraphs numbered 1 to 6, of which it is a part. Why should I disregard paragraph 3 when I think Congress gave it a meaning and importance which I cannot in good conscience disregard.

I have read Judge Sanborn's opinion in the Hillcrest case. There certainly is nothing in that opinion that would vary or in any manner affect or influence

the determination or decision which I have reached in this case. If anything, I think it lends support to it. I see no purpose in calling further attention to *Woods v. Durr* except to say that in the last paragraph thereof the court takes time to say "We hold, therefore, that if a landlord seeks to recover possession of his housing accommodations for the immediate purpose, entertained in good faith, of withdrawing them * * *," "what such a landlord proposes to do with his accommodations is wholly immaterial provided he understands and intends in good faith that they shall not, at least so long as Section 209 (a) (5) of the Act remains in force, again be offered for rent."

I think that decision was rendered in the light of the facts and circumstances before the court and it was limited to the case then presented before it.

A preliminary injunction will issue as I find that the defendant has not in good faith sought to withdraw the housing accommodations from the rental market within the meaning and intent of the Act, and as suggested yesterday, if the defendant wants it, I shall of course be glad to include any provisions that will permit him to show the quarters that he owns and desires to sell and anybody who violates that injunction will be back here in court for contempt.

Mr. Dim, you may present an order in accordance with the views expressed by myself in the opinion I have just delivered.

* * * * *

MEMO RULING DENYING MOTION FOR NEW TRIAL

No. 874304

In the Municipal Court, City of Los Angeles,
County of Los Angeles, State of California.

Thomas B. Holt and *Rosemary E. Holt*, plaintiffs,
v. *Marie Lonergan*, defendant.

In support of their motion for a new trial from my decision in favor of the defendant in this action of unlawful detainer (see Memorandum Decision filed October 25, 1948, L. A. Daily Journal Reprint No. 1355 from issue of October 30, 1948), plaintiffs rely particularly on the case of *Woods v. Durr*, decided by the Third Circuit Court of Appeals of the United States on November 8, 1948.

In *Holt v. Lonergan*, *supra*, I held that the actual intent of a landlord to withdraw one of his apartments from the rental market and to refrain from rerenting it as housing accommodations for the duration of federal price control is insufficient to meet the statutory requirements of "good faith" in Section 209 (a) (5) of the Housing and Rent Act of 1947, as amended, where the landlord's real or dominant reason for taking the apartment off the market was to secure the ouster of a tenant he disliked. In *Woods v. Durr*, the court stated: "What such a landlord proposes to do with his accommodations is wholly immaterial provided he understands and intends in good faith that they shall not, at least so long as Section 209 (a) (5) of the Act remains in force, again be offered for rent as housing accommodations by him or any subsequent owner."

It is apparent, therefore, that if *Woods v. Durr* correctly interprets Section 209 (a) (5), *supra*, my decision in *Holt v. Lonergan* is erroneous, and the motion for new trial should be granted.

The decision of so high and respected a court as the Third Circuit Court of Appeals is entitled to great weight and ordinarily would be followed by me, particularly when determining a question of federal law. The opinion of that Court takes on added significance by reason of the fact that it was authored by Judge Maris, who previously had served as Chief Judge of

the Emergency Court of Appeals of the United States, established under the Emergency Price Control Act of 1942 for the purpose of passing upon price and rent control questions arising under the federal legislation. On the other hand, however, I am advised that the Office of Housing Expediter, through the Solicitor General, is filing a petition for certiorari in the United States Supreme Court to secure a review of the Circuit Court's decision in *Woods v. Durr*. In addition, the ruling of the Eighth Circuit Court of Appeals in *Woods v. Hillcrest Terrace Corporation*, decided December 6, 1948, and not yet reported in Federal Reporter, has some implications contrary to the holding in *Woods v. Durr*.

Since the decision in *Woods v. Durr* has not found acquiescence as yet in the Office of Housing Expediter and because of the importance of the question to the defendant in this action, I therefore shall exercise my honest judgment as to whether the reasoning of the court in *Woods v. Durr*, is, in my opinion, sound and shall rule upon the motion for new trial on that basis.

In *Woods v. Durr*, the Circuit Court considered as true the fact that the defendant landlord was seeking eviction of the tenant under Section 209 (a) (5) for the reason that she desired to sell the property and would be in a better position to sell the property if it were vacant. In upholding the landlord's right to evict for the purpose of sale by withdrawal of the housing accommodations from the rental market, the Court relies primarily upon Section 302 of the Housing and Rent Act of 1947, which was added by 1948 amendment and which provides:

Nothing in this Act or in the Housing and Rent Act of 1947, as amended, shall be construed to require any person to offer any housing accommodations for rent.

Judge Maris, in *Durr v. Woods*, also relies on *Taylor v. Bowles*, 145 F. 2d 833, decided by the Emergency Court of Appeals in 1944. In the *Taylor* case, the Court held that, under Section 4 (d) of the Emergency Price Control Act of 1942, which was substantially identical with Section 302, *supra*, of the Housing and Rent Act of 1947, as amended, a landlord might withdraw his housing accommodations from the rental market merely because of dissatisfaction with the existing maximum rents. The Court in that case also referred to the fact that the landlord preferred leaving his apartments vacant rather than continuing to rent them at existing ceilings and that if, after lapse of a temporary period, he did not succeed in securing an upward revision of the ceilings, he intended to dispose of the apartment house.

Reliance is also placed by the court in *Woods v. Durr*, *supra*, upon the legislative history of Sections 302, *supra*, and 209 (a) (5) in arriving at its ultimate conclusion.

After giving due consideration to Judge Maris' discussion of Section 302 of the Housing and Rent Act, of *Taylor v. Bowles*, *supra*, and of the legislative history of Sections 302 and 209 (a) (5) of that Act, however, I am unable to concur with the reasoning or holding of the court in *Woods v. Durr*, *supra*, for the following reasons.

First, Section 302, read literally, pertains only to property not already occupied by a tenant. Thus a landlord may not be required "*to offer any accommodations for rent.*" [Italics added.] But such a provision neither by express term nor by necessary implication applies to a situation wherein the landlord previously has offered his premises for rent and has a tenant already in occupancy. Having submitted his property to a rental use at a time when a war emer-

gency arose and continues to exist, requiring in Congressional judgment the imposition of restraints upon the eviction process, the landlord and his property are subject to lawful and reasonable regulation within the purview of the federal Constitution. These Congressional restraints upon the eviction process are found in Section 209 of the Housing and Rent Act of 1947, as amended, and appear in the form of a general restraint upon eviction so long as the tenant lawfully abides by the obligations of his tenancy, which general restraint is subject to a few enumerated exceptions found in the subparagraphs of Section 209 (a). It is necessary, therefore, for a landlord whose property is presently occupied by a tenant under rent control to bring himself within one or more of the enumerated exceptions in order to evict the tenant. But Section 302, having reference to property which is not tenant-occupied, should have no influence upon the construction of these exceptions to the restraint upon eviction. Certainly a decided distinction both in fact and in constitutional effect exists between compelling a property owner who is not renting his premises to put them on the rental market and in prohibiting one who has already created a landlord-tenant relationship, to terminate that relationship, and in my opinion Section 302 relates only to the former situation.

What I consider to be the same confusion and failure to distinguish between the independent functions of Sections 302 and 209 runs through the Circuit Court's discussion of the legislative history of these Sections in *Woods v. Durr, supra*. The legislative history therein recited clearly indicates that each of the new sections added by Congress in 1948 serves a different purpose. Section 302 provides that a landlord shall not be required to rent his premises if they are vacant, and this should be so whether the premises

have never before been tenant-occupied or whether they have been voluntarily vacated by the tenant. While Judge Maris states that Section 302 must have been incorporated for the benefit of those owners whose property was in the rental market because "those owners whose accommodations were not in the rental market were not subject to the Act at all and accordingly had no need of Section 302," I believe this argument overlooks the obvious need or place for such a provision with reference to accommodations already subjected to rent control, but which have become vacant either by resort to lawful legal process or by voluntary action of the tenant. In the latter situation, Section 302 would operate to enable the landlord to decline to rerent the premises, if he so desired.

It is true that the legislative history of Section 209 (a) (5) and the clear import of the language in that subparagraph gives the landlord the right, where he is acting "in good faith," to withdraw his property from the market while it is tenant-occupied. But nothing that I read in the Committee reports or in Senator Cain's remarks on the floor of the Senate indicates a Congressional intent that a landlord may withdraw his property from the rental market and evict the tenant then in occupancy solely for the purpose of facilitating the salability and to increase the sales price of the premises.

But the most serious objection I have to the decision in *Woods v. Durr, supra*, is to be found in the court's construction of the last clause of Section 209 (a) (5). This subparagraph permits eviction if:

the landlord seeks in good faith to recover possession of such housing accommodations for the purpose of withdrawing such housing accommodations from the rental market, *and such housing accommodations shall not there-*

after be offered for rent as such. [Italics added.]

Woods v. Durr explicitly recognizes that the withdrawal of the property from the housing rental market must be "permanent," i. e., for the duration of federal controls. The court also states that, after withdrawal by a landlord pursuant to Section 209 (a) (5), the premises may not "again be offered for rent as housing accommodations either by him or any subsequent owner." [Italics added.]

The reason for the courts construing the last clause of Section 209 (a) (5) as binding on a subsequent purchaser of the property is obvious, for without such a restriction, it is apparent that a means for wholesale evasion of the restraint on eviction imposed by Section 209 would exist. But any degree of reflection upon the effect of such an interpretation should lead to the conclusion that, as so construed, Section 209 (a) (5) well might be held unconstitutional as applied to the subsequent purchaser.

Thus, for example, we would have a common situation arise where one would purchase a house or structure, obviously intended for housing accommodations, standing vacant, with no actual knowledge that the house had been withdrawn from the rental market, with no constructive knowledge even that the premises had been tenant-occupied which could arise by the fact of tenant-occupancy as of the date of purchase of the property, and nothing of record under the recording statutes to put the purchaser on constructive notice of the fact of withdrawal from the rental market. To hold, under such circumstances, that a *bona fide* purchaser for value could subsequent to his purchase be prohibited from renting his property raises in my mind so serious a question of constitutionality that, in accordance with well-established

canons of interpretations, such a construction should be avoided. If, on the other hand, the court should find such a construction to be the meaning intended by Congress, then, in my opinion, should the last clause be held unconstitutional as applied to the subsequent purchaser, the entire exception found in Section 209 (a) (5) would fall, for Congress surely could not have intended that the exception should remain in effect if the clause prohibiting rerental of the property is invalid.

It is true that at least one Federal District Court has tried to meet this objection by permitting eviction by withdrawal pursuant to Section 209 (a) (5) for the purpose of sale, but by requiring the landlord through injunctive process to place in any deed conveying the property a covenant against renting the property for housing accommodations. Such a remedy, of course, could only be partially effective, for it would be binding only on the owner who was a party to the injunction suit and could have no restrictive effect on sales of the property subsequent to the one effected by the owner subject to the injunction. In addition, even the partial remedy afforded by injunction could not be awarded by most courts in which the eviction proceedings would be maintained, for such courts as the Municipal Courts in California, which hear practically all such cases, have no equitable jurisdiction to issue injunctions.

Obviously, therefore, the only way for the prohibition against rerenting of the premises for housing accommodations to be effective is for the property to remain in the landlord who avails himself of the right to evict conferred by Section 209 (a) (5), *supra*. As so construed, Section 209 (a) (5) would not, in my opinion, be unconstitutional.

Generally speaking, the Housing and Rent Act of 1947, as amended, does not prohibit a landlord from selling his property at any time. True, the fact that he may have a tenant in the premises may make sale more difficult and may reduce the price for which the property may be sold. But, as stated by the United States Supreme Court in *Bowles v. Willingham*, 321 U. S. 503, at pages 517, 518: "Of course, price control, the same as other forms of regulation, may reduce the value of the property regulated. But as we have pointed out in the *Hope Natural Gas Co.* case (320 U. S. p. 601), that does not mean that the regulation is unconstitutional. * * * A member of the class which is regulated may suffer economic losses not shared by others. His property may lose utility and depreciate in value as a consequence of regulation. But that has never been a barrier to the exercise of the police power."

In order partially to relieve the landlord from the effect of the general restraint on eviction when he wishes to sell his property, Congress enacted Section 209 (a) (3), which permits a landlord to evict a tenant if:

the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser.

Apart from this exception, eviction for purpose of sale is not expressly authorized by any other of the exceptions enumerated in Section 209 (a), *supra*. To permit the landlord to evict through resort to Section 209 (a) (5), for the purpose of sale, without reference to the necessity for owner-occupancy by the purchaser of the premises, obviously would enable any landlord to avoid the restrictions implicit in Section 209 (a)

(3). So far as the existing landlord is concerned, he has no real concern with the use to which the property is put after sale by him. Consequently, if as I have concluded, no provision appears in Section 209 (a) (5) which can constitutionally be invoked to impose upon subsequent bona fide purchasers the restraint against rerenting the premises for housing accommodations, it follows that not only would Section 209 (a) (5) secure no additional objective under the rent act but would enable a landlord to evade the restrictions implicit in Section 209 (a) (3), *supra*.

As I read the Act the landlord's rights to sell his property which is subject to rent control are as follows: A landlord may either sell his property at any time without evicting the tenant, or he may evict the tenant for the purpose of sale if he has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser, as provided in Section 209 (a) (3), *supra*. If, however, he elects to withdraw his property from the rental market, he cannot do so if he intends to secure the vacancy for the purpose of selling the property; in such a situation, he is attempting to use the ground for eviction contained in Section 209 (a) (5) for the purpose of evading another provision of the Act, i. e., Section 209 (a) (3), and therefore is not acting "in good faith" as required by Section 209 (a) (5). The reason or motive for the landlord's resorting to Section 209 (a) (5), therefore, is material, contrary to the holding in *Woods v. Durr, supra*.

I already have set forth in some detail a number of proper objectives which a landlord could have in availing himself of the withdrawal procedure authorized by Section 209 (a) (5), in my memorandum decision in this case filed October 25. I believe these reasons

which are consistent with the meaning of the words "in good faith," as used in Section 209 (a), *supra*, afford sufficient and the motivating grounds for the enactment of Section 209 (a) (5), and that my conclusion does not emasculate this ground for eviction into meaningless phraseology. If, however, the landlord wishes to evict a tenant so as to bring himself within the restrictions of Section 209 (a) (5) for the benefits he elects to secure by this withdrawal procedure, having voluntarily subjected himself to such restraint, in order to secure a desired benefit, he may not complain that any restraints on his right of alienation or sale result in an infringement of his Constitutional rights. (See *In re Tenner*, 20 Cal. 2d 670, at p. 674.)

With respect to the case of *Taylor v. Bowles*, *supra*, relied upon in *Woods v. Durr*, *supra*, I am of the opinion, first, that that holding has no application to the construction of Section 209 (a) (5) because no such legislative plan as that created by Section 209 of the Housing and Rent Act of 1947, as amended, was involved in the *Taylor* case, and secondly, because that case does not directly hold that withdrawal for purpose of sale was proper. On the contrary, in discussing the impact of its decision on the Emergency Price Control Act of 1942, the Emergency Court of Appeals indicated it felt its decision would have little effect upon the rent control situation and expressly stated that to permit an occasional and obstinate landlord to withdraw his premises from the rental market would not result in a general landlords' strike.

If, of course, the use of premises withdrawn from the rental market pursuant to Section 209 (a) (5) is as limited as I have indicated in my original decision, it is true that that ground for eviction will be used but occasionally and only where the actual necessity

for this type of relief exists. If, however, Section 209 (a) (5) is construed to permit eviction and withdrawal for the purpose of sale, it would become a ready instrument for a type of eviction not contemplated nor intended by Congress, and which could result only in the utmost confusion when the property reached the hands of subsequent purchasers.

For the foregoing reasons, I believe the case of *Woods v. Durr* erroneously holds that the use to which the landlord intends to put his accommodations, following the eviction of the tenant-in-occupancy, is immaterial. Furthermore, there appears to be no discussion in *Woods v. Durr* of the meaning of the phrase "in good faith" as used in Section 209, *supra*, nor of the cases construing that term, nor of the reason for the Congress having engrafted it as a condition in Section 209 (a) (5).

The motion for new trial is denied.

Dated December 24, 1948.

DANIEL N. STEVENS,
Judge.

BALTIMORE CITY COURT
Filed January 26, 1949

SAMUEL FOX

v.

WALTER ROBERTSON

JAMES F. MILLER ET AL.

v.

MRS. MARY SHAMBURGER

MARYLAND STATE HOUSING CO.

v.

ETHEL WISNER

Jack M. Fox for Samuel Fox, plaintiff.

Walter Robertson, defendant, in proper person.

F. Duncan Cornell for James F. Miller et al., plaintiffs.

Mrs. Charles Shamburger on behalf of Mrs. Mary Shamburger, defendant.

Jesse Spector for Maryland State Housing Co., plaintiff.

Ethel Wisner, defendant, in proper person.

Thomas E. Barrett, Jr., Area Attorney for U. S. Housing Expediter, as *amicus curiae* in all three cases.

NILES, J.:

The present three cases, on appeal from the People's Court, were all decided in favor of the tenants of residential properties in suits brought by the landlords to evict them. The Court heard testimony separately in each case, and then heard argument in all together. In each case the landlord served on the tenant a notice to quit, bearing a notation which is substantially a copy of the words of the Housing Act of 1947 (as amended to 1948), section 209 (a) (5), as follows:

The landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market and such housing accommodations shall not be thereafter offered for rent as such.

The first case is that of *Samuel Fox v. Walter Robertson* and concerns the property 606 North Brice

Street. Mr. Fox, one of the landlords, testified that what he wants to do is get the tenant out, improve the property and sell it; he does not intend to rent it, but he has no contract of sale, either written or oral.

The second case is that of *James F. Miller et al. v. Mrs. Mary Shamburger* and concerns the property 2833 Miles Street. Both of the owners of the property testified that they had no definite plans as to what they were going to do with the property. They may sell it, they may use it for some purpose other than residential but they know they cannot rent it; and they do not intend to rent it.

The third case is that of *Maryland State Housing Company v. Ethel Wisner* and concerns the property 3361 Falls Road. Mr. Kaufman, president of plaintiff corporation, testified that he wants to get the tenant out, that he wants to make some repairs or improvements, and that he does not want to raise the rent, which he thinks is fair.

The problem is whether this Court should follow a decision of the People's Court, dated September 22, 1948, in the case of *Property Service Co., Agent v. John Spicknall*, in which case Judge Hennegan wrote an opinion concurred in by the other judges of that Court and which was published in *The Daily Record* of September 24, 1948. In that case a landlord sought to evict a tenant in order to have an empty house for sale, but he did not have a written contract with any purchaser. Judge Hennegan held that the landlord was not entitled to evict the tenant under section 209 (a) 5.

The case of *Woods v. Durr*, 170 F. 2d 976, decided by the United States Court of Appeals for the Third Circuit on November 3, 1948 (No. 9811), is cited by the landlords as being a later case and of much higher authority. In that case three Judges of the

U. S. Court of Appeals came to the opposite conclusion, namely, that a landlord has the right to evict a tenant if, in good faith, the landlord intends not to rent the house again, but merely to hold the building off the market until it is legal to rent it or to sell it to anyone without restriction.

Cases to the opposite effect have been cited by Mr. Barrett, Area Attorney for the U. S. Housing Expediter, who appeared as *amicus curiae*. They are *Woods v. Seaton*, — F. 2d —, decided by the U. S. District Court for the Eastern District of Virginia on October 26, 1948; *Woods v. Hillcrest Terrace Corp.*, 170 F. 2d 780, decided by the U. S. Court of Appeals for the 8th Circuit on December 6, 1948; *Woods v. Taper*, 79 F. Supp. 984, decided by the United States District Court for the Southern District of California on July 27, 1948; *Woods v. Cammett*, 80 F. Supp. 636, decided by the United States District Court for the District of New Hampshire on October 19, 1948; *Woods v. Palumbo*, 79 F. Supp. 998, decided by the U. S. District Court for the Middle District of Pennsylvania on September 17, 1948. None of the authorities cited are binding on this Court.

The reasons supporting the respective conclusions are very well summed up in Judge Hennegan's opinion in the *Spicknall* case on the one hand, and Judge Maris' opinion in the *Durr* case on the other.

My view is this: that the basic object of the Housing Act is to protect tenants against increases of rent, which may be caused either by direct increases in existing tenancies, or by reflections of increased prices at which houses are sold.

There is an express provision in the Housing Act, namely, section 209 (a) 3, which applies to sales, and that section is the only specific provision regard-

ing sales. It provides that unless a landlord has a written contract of sale with a specific purchaser who intends to occupy the house himself, the landlord is not entitled to evict the tenant on the ground that he desires to sell. In the present cases none of the landlords has a written contract of sale of that sort.

The landlords all contend that they are entitled to evict, because they all comply with the exact words of the statute, in that they seek, in good faith, to recover possession of the housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations will not be offered for rent as such. I find great difficulty in understanding just exactly what these words mean; I find more difficulty in imagining how they can be enforced. But I do not have to construe them, because, it seems to me, Judge Hennegan's reasoning in the *Spicknall* case is correct in deciding that in cases of sale, subsection 3, rather than subsection 5, governs.

In view of the fact that the *Durr* case in the Court of Appeals for the Third Circuit may find its way to the Supreme Court, it might be suggested that the Court delay its decision until the Supreme Court has decided the question. I do not think that that would be advisable. If the Supreme Court affirms the *Durr* case, the landlords can bring new suits, and the only thing lost is the minor matter of costs. In the meanwhile, however, the situation would be unsettled in Baltimore. Since the cases are here, and have been fully heard and argued, they should be disposed of now.

I agree with what Judge Hennegan says in the *Spicknall* case, and think that I cannot state it better than he did. For the reasons stated in Judge Hennegan's opinion, therefore, I affirm the decisions of

the People's Court, and render judgment for the defendant in each case.

PEOPLE'S COURT OF BALTIMORE CITY

Filed September 22, 1948—Case No. 11906-48

PROPERTY SERVICE Co., AGENT

v.

JOHN SPICKNALL, 307 EAST LANVALE STREET

Housing and Rent Control Act of 1948—Notice to
Repossess Premises and Terminate Tenancy—
Judgment for Defendant

HENNEGAN, J.:

On April 5th, 1948, the plaintiff as Agent of the R-5 Construction Company, owner of the premises in Baltimore City, known as No. 307 E. Lanvale Street, sent a notice to its tenant, the defendant, advising the latter of its intention and desire to repossess the premises and terminate the tenancy as of August 12th, 1948, and gave as a reason for such termination of tenancy that:

the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market and such housing accommodations shall not thereafter be offered for rent as such.

which reason follows the wording of Section 209 (a) (5) of the Housing and Rent Control Act of 1948.

Surrender of possession of the property was not made at the expiration of the notice and as a result this case was instituted and in compliance with a rule of this Court a pretrial affidavit was made on behalf

of the owner which recited that the reason for the eviction was:

it wants an empty house so that it can sell it as such.

At trial the plaintiff adopted as its testimony in the case the averment of the pretrial affidavit and urged that same was sufficient in law to entitle it to a judgment of restitution of the premises under Section 209 (a) (5) of the Housing and Rent Control Act of 1948.

The determination of the case rests solely upon the legal interpretation of the above section of the Act of 1948 and whether in the enactment of same Congress intended to grant landlords an *additional* right of eviction for purposes of sale of property, as a right of eviction in case of sale had already been granted by Section 209 (a) (3) of the Act of 1947.

Any attempt to ascertain legislative intent regarding an act much encompass due consideration of the purposes and circumstances dictating its enactment, together with a careful study of the context of the act in question. With this in mind it might be well to briefly review the history of the rent-control legislation involved in this case.

At the very outset of the war it became apparent that legislation to regulate prices and rents was necessary to control the acute shortage of commodities and housing accommodations. Congress, aware of this situation, passed the "Emergency Price Control Act of 1942" on January 30, 1942, when the war was less than two months in duration. The Act clearly sets forth its purposes in these words:

and the purposes of this Act are to stabilize prices and to prevent speculative, unwarranted and abnormal increases in rents and prices.

Amendments to the Act was made from time to time, the last being in 1948 and with this latter amend-

ment the Court is now concerned. It is reasonable to assume that in terminating rent control in certain areas and retaining control in other areas that Congress felt in these areas where controls are retained (such as the Baltimore area) that the same reasons exist for control that existed at the time of passage of the Act in 1942. Otherwise rent control would have been terminated in all areas.

It is needless to say more of the purposes and circumstances surrounding the passage of the Act of 1948, than to repeat that the temper of the legislative mind at that time was to control housing and not to invite speculation therein.

With this understanding of the purposes for control legislation over housing accommodations the Court has made a careful study of the language of the several acts and amendments thereto, so as to arrive at a logical interpretation of the terms of Section 209 (a) (5) as applied to the pending case.

The 1948 Act is in the main amendatory of the Act of 1947 wherein under Section 209 (a) (1), (2), (3), (4), and (5) was set forth the permissible causes for eviction of tenants. By Section 209 (a) (3) eviction of tenants was permitted when:

the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations for such purchaser.

The Act of 1948 while amending other subsections of Section 209 (a) by specific reference to such subsections and by either additions thereto or eliminations therefrom did not disturb the wording of subsection (3) by the deletion or addition of a single word. Consequently the conclusion to be made is that subsection (3) amply provided the means for

eviction of tenants for the purpose of effecting sales of property and that Section 209 (a) (5) providing:

the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such

was inserted as a separate and independent subsection and was never intended to limit or broaden the language of other subsections of the act. It was intended to apply to causes not otherwise provided for in the act. It would be as sensible to urge that Section 209 (a) (5) in some manner was to extend or revise the reasons for eviction of tenants set forth in the other subsections of Section 209 as to say that it was intended to enlarge upon eviction for purpose of sale of property as set out in subsection (3).

The last portion of Section 209 (a) (5) provides as follows:

that such housing accommodations shall not thereafter be offered for rent as such.

This, in the opinion of the Court, excludes the idea of sale and contemplates retention of ownership in the landlord and gives weight to the contention that this section was not to be used where sale of property was involved. Unless this be so, the words

“Shall not thereafter be offered for rent” as housing accommodations would have little meaning because a purchaser from the landlord, not bound by his affidavit, could offer the property for rent, contrary to the terms of the act. While enforcement is ordinarily not a function of the Court, nevertheless, when the Court, in the construction of the terms of a Statute can give force and effect to the words of the Statute,

it is bound to do so. In this case it must support statutory law and give it full power and effect by denying eviction where it appears that the property is taken from the rental market for purpose of sale.

To apply any other interpretation to Section 209 (a) (5) of the Housing and Rent Control Act of 1948 would be contrary to the purposes of the Act, would distort its language and lead to illegal eviction of tenants with subsequent speculation in vacant housing accommodations which the legislative branch of the Federal Government had hoped to prevent.

In a recent injunction case filed in the District Court of the United States, Southern District of California, Central Division, by Tighe E. Woods, Housing Expediter, vs. Sydney Mark Taper, where the similar facts existed as in the instant case, the Court held that Section 209 (a) (5) did not apply where the sole reason for eviction was to secure a vacant house for sale.

For the reasons above set forth the Court feels that the plaintiff herein is not entitled to restitution of the premises mentioned and will therefore enter a judgment for the defendant.

The Court having decided this case on an interpretation of Section 209 (a) (5) of the Housing and Rent Control Act of 1948 does not find it necessary to pass upon the question of whether the plaintiff is a proper party plaintiff, especially since the question was not raised at trial.

There are now pending in this Court a number of cases whose decision presents the identical question involved in this case. There are literally hundreds of potential suits based upon withdrawal of premises from the rental market. As the question will certainly be presented to the Baltimore City Court on appeal, it has been considered proper that the reason-

ing upon which this decision is based be expressed in a written opinion for the information of all concerned.

Each of the other Judges of this Court concurs in this opinion. There are thirty-seven cases, each involving this question, and held sub curia by the Judges of this Court, that have been today decided for the defendants in accordance with this opinion.

In the District Court of the United States for the
Western District of Missouri, Western Division

No. 5192

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE
HOUSING EXPEDITER, PLAINTIFF

v.

RUTH ALEXANDER AND OPAL BAKER, DEFENDANTS

MEMORANDUM

On motion for summary judgment, the following undisputed facts appear from the pleadings, affidavits and agreements made at pretrial conference. No other facts material to the issues appearing to be in dispute between the parties, the matter is now, by agreement of parties, submitted to the court for decision.

The housing accommodations involved in this action is controlled housing within the purview of the Housing and Rent Act of 1947, as amended. Said housing accommodation is a 6-apartment building located in Kansas City, Missouri, owned by Ruth Alexander, a single woman, and until the occurrence hereinafter mentioned was rented and occupied by various tenants of Ruth Alexander. November 19, 1948, defendant Alexander executed and recorded a written declaration in which it was declared that she "desires to

sell separate interests in said property and for such purpose does * * * subject * * * described real estate to the restrictions, agreements, covenants, charges and assessments" set forth therein. By said declaration, each apartment in the premises is deemed a "private apartment" and defined as consisting "of the living quarters therein, together with the floors, * * * and other parts of said building wholly within said private apartment." Tersely stated, the land, outer structure, entranceways and halls in this building located on said premises are specifically designated "common property" and all parts thereof "except such as are part of the private apartment" are so dedicated. By the declaration, the legal title to the property is "divided into six (6) equal parts," and each interest consists "of an undivided one-sixth ($\frac{1}{6}$ th) interest in and to all the common property and all of one private apartment." "Each owner of an interest as above set forth (is) entitled to the sole and exclusive possession and occupancy of the private apartment * * * subject to existing tenancies" and under certain specified terms and conditions set forth in the declaration "entitled to the free use of the common property." In the declaration, Ruth Alexander is "designated and appointed as sole Managing Trustee for said property, until all apartment units have been sold and conveyed, and until her successor is appointed." Provision is therein made as to how a successor trustee may be appointed and the duties and obligations of such trustee are outlined in said instrument. The trustee is required to give bond, operate the apartment building and authorized to levy and receive from the coowners the amount of monthly assessments necessary to defray the cost of the operation of the premises. Coowners defaulting for thirty days to make payment of any assessment

are subject to having the utilities to their private apartment discontinued, and if such default continues for forty-five days, required to vacate the private apartment, and failing peaceably to do so, are liable to eviction action at the hands of the trustee. Upon vacation of an apartment, the trustee is authorized to rent the same and collect the rent therefrom until the default is cured; whereupon the vacated owner's rights are reinstated, subject to the then tenancy of the apartment. Each interest conveyed descends "in the same manner as any other interest in real estate, subject to all easements, reservations, restrictions, liens and encumbrances of record, and to the terms and conditions of (the) declaration."

Prior to the execution of such declaration, defendant Alexander caused notice of eviction to be served upon certain of the then tenants in said housing accommodation, stating as grounds therefor that the particular apartment was to be permanently removed from the rental housing market. After the execution of the declaration, she proceeded to sell separate "private apartments" in said premises. Pursuant to said plan, a formal written contract for the sale of each private apartment sold was entered into between defendant Alexander and the purchaser thereof, as manifest in Exhibit 2 herein. Four (4) such apartments having been sold, the tenants therein vacated the same and the purchasers of said apartments are now in possession thereof. As to the remaining two (2) apartments, no notice to evict has ever been served on one of the tenants therein. As to the other remaining apartment, notice to evict was served before any formal written contract for the sale of that apartment was executed by the defendant Alexander. The apartment last referred to is now occupied by tenant Harry L. Israel, Jr. On May 25, 1948, defendant

Alexander entered into a written contract of sale with her codefendant, Opal Baker, covering the apartment occupied by tenant Israel. The transaction, the subject matter of that contract of sale, has never been consummated. After the bringing of this action, said contract, by mutual agreement between the parties thereto, was cancelled and the earnest money deposited on the purchase price thereunder has been refunded to the defendant Opal Baker. Defendant Alexander intends to evict tenant Israel, now occupying said apartment, and sell such apartment to some other purchaser. She offered to sell said apartment to such tenant prior to serving notice of eviction to him.

No corporation has been formed to hold title to the property in question. No certificate of stock evidencing interest in said property, has ever been issued. Title to the several apartments located in the premises involved vests in the purchaser in accordance with the terms of the above-referred-to declaration, Exhibit 1 herein.

Under the foregoing facts, this action was instituted by plaintiff to enjoin defendants from evicting tenant Harry L. Israel, Jr., from the controlled housing accommodation now occupied by him under the notice of eviction above referred to. The theory upon which plaintiff premises this action is that the acts and conduct of defendant Ruth Alexander, in executing the declaration aforesaid and selling "private apartments" in the housing accommodation in question, merely creates "proprietary leases" of such apartments and is an attempted evasion of the cooperative proviso contained in *Section 209 (a) (2) of the Housing and Rent Act of 1947, as amended*, and that the giving of said notice of eviction to said tenant was not made in good faith for the purpose of permanently withdrawing said housing accommoda-

tion from the rental market and is, therefore, in violation of subsection (5) of Section 209 (a), *supra*.

From the foregoing, it is evident that so far as defendant Opal Baker is now concerned in this litigation, the cause of action here attempted to be asserted against her has become moot. The parties are in agreement that the contract under which she sought to purchase the "private apartment" in question has been cancelled and that she has no further interest in the housing accommodation here involved. As a consequence, the granting of relief here prayed, so far as defendant Opal Baker is now concerned, would be futile. This cause now being moot as to defendant Opal Baker, and to clarify the remaining issues herein, this cause is now dismissed as to said defendant Baker.

To resolve the remaining issues between plaintiff and defendant Alexander, it is not necessary for us to here determine the legal effect of the declaration executed by her, and whether the dividing of the housing accommodation in question into six separate estates and the sale of "private apartments" to prospective purchasers is within the ambit of the cooperative proviso of Section 209 (a) (2), *supra*. Regardless of that question, plaintiff would be entitled to prevail in this action and defendant Alexander subject to being enjoined as prayed, if the notice of eviction she caused to be served on tenant Israel was not made in good faith for the purpose of permanently removing the housing accommodation in question from the rental market.

Section 209 (a) (5) of the Housing and Rent Act of 1947, as amended, provides

SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a max-

imum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as that tenant continues to pay the rent to which the landlord is entitled unless—

* * * * *

(5) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such.

Under the mandate of that subsection, a landlord cannot establish “good faith” in the withdrawal of a housing accommodation from the rental market if such attempted withdrawal is shown to be not permanent. A landlord who seeks to recover possession of a controlled housing accommodation for the immediate purpose, entertained in good faith, of withdrawing such accommodation from the rental market must, under subsection (5), *supra*, establish that such withdrawal is permanent and that so long as the Housing and Rent Act of 1947, as amended, remains in force, that such housing accommodation will not again be offered for rent, either by himself or through any subsequent owner thereof, *Woods v. Durr*, (3d Cir.) 170 F. 2d 976; *Woods v. Hillcrest Terrace Corp.* (8th Cir.) 170 F. 2d 980.

Therefore, assuming, without deciding, that the declaration executed by Ruth Alexander is not within the purview of the cooperative proviso of Section 209 (a) (2) and that the sale of private apartments pursuant thereto creates tenancies in common in the purchasers thereof, as contended by defendant, the

fact remains that the declaration executed by Ruth Alexander discloses, upon its face, that the housing accommodation here involved, and occupied by tenant Israel, is not in good faith, a permanent withdrawal of said housing accommodation from such market. Under said declaration, a defaulting purchaser of a "private apartment" may be evicted and the "private apartment" purchased by him placed on the rental market for the purpose of curing any defaults made in assessments chargeable to such purchaser under said declaration. Therefore, it is possible that after defendant Alexander sells the private apartment now occupied by tenant Israel, the purchaser thereof could become in default and said "private apartment," the housing accommodation here involved, could again be placed on the rental market during the time that the Housing and Rent Act of 1947, as amended, is in force. Under such circumstances, the notice of eviction served by the landlord on tenant Israel is established to be not a good faith withdrawal of the housing accommodation in question from the rental market and that said attempted eviction is in violation of Section 209 (a) (5), *supra*. Upon the undisputed facts in this case, plaintiff is entitled to the relief prayed.

A permanent injunction will be issued herein, restraining and enjoining the defendant Ruth Alexander from evicting, or attempting to evict, her tenant Harry L. Israel, Jr., from the housing accommodation in question, under the notice of eviction served upon him and involved in this action. Such injunction will not prohibit the service of any other proper notice of eviction by the landlord herein pursuant to

the terms of the Housing and Rent Act of 1947, as amended.

Plaintiff's counsel prepare decree.

ALBERT A. RIDGE,
Judge.

Dated at Kansas City, Missouri, this 18th day of February 1949.

APPEAL FROM THE FIRST CITY COURT OF NEW ORLEANS,
SECTION "C", No. 335-067; HONORABLE W. ALEX-
ANDER BAHNS, JUDGE

No. 19069, Court of Appeal, Parish of Orleans, State
of Louisiana

MR. AND MRS. JOHN A. POCHE, PLAINTIFFS AND
APPELLANTS

v.

PAUL L. THIBODEAUX, DEFENDANT AND APPELLEE

Plaintiffs in rule seek to obtain possession of the housing accommodations owned by them and occupied by Paul L. Thibodeaux as tenant. They allege that they desire to permanently withdraw the leased premises from Rent Market. The defendant excepted on the ground that the allegations are vague and indefinite and that the rule does not contain an allegation that the plaintiffs are in good faith, nor that they desire to remove the property from the rental market immediately. I find nothing in any of these exceptions.

The real defense is that the plaintiffs in rule are not in good faith.

In spite of the fact that they allege that they desire to withdraw the property from the rental market,

Mr. Thibodeaux took the stand and testified that he did not know just what he wanted to do with the property. He said that he might remodel it and use it himself, but that, on the other hand, he might desire to sell it and that it could more readily be sold without a tenant. It is my opinion that the "Housing and Rent Act of 1948" does not authorize a landlord to eject a tenant for any such indefinite reason as that given by plaintiffs. If plaintiffs desire the property for their own use as housing accommodations they should have brought their rule under section 209 (a) 2 which authorizes the landlord to recover possession "for his immediate and personal use and occupancy as housing accommodations". If, on the other hand, possession was desired for the purpose of withdrawing it from the rental market in order that it be sold to a prospective purchaser who had already been obtained and who desired to occupy it as housing accommodations, then the rule should have been brought under Section 209 (a) 3 of the statute.

I have been shown no section of the statute which, in my opinion, authorizes a landlord to eject a tenant so that the property may be more easily sold, unless a prospective purchaser has already been secured. In fact, as I interpret section 209 (a) 5, it seems to me to provide that even if the property is sold, it may not again be placed on the rental market, and I say this because section 209 (a) 3, which provides that it may be taken off the rental market in order that it may be sold to a purchaser who desires to occupy it as housing accommodations, seems to be inconsistent with any interpretation of Section 209 (a) 5, which would permit the property to be taken off the rental market so that it might be offered for sale.

It is true that in *Woods v. Durr*, No. 9811, of the docket of the United States Court of Appeals for the

Third Circuit, decided November 8, 1948, the Court held that a landlord who seeks to recover possession of his housing accommodations for the immediate good faith purpose of withdrawing them from the rental market is not prevented from doing so by the Housing and Rent Act as amended, and the fact that the landlord's purpose is to improve his opportunities for selling the property by having it ready for occupancy by a prospective purchaser is immaterial. In that case, however, it appeared that because of an overdue mortgage in a substantial amount, it was absolutely necessary that the house be sold.

At any rate, I am convinced that whatever his purpose may be, the landlord must set forth that purpose in his rule and he cannot be as indefinite about it as are the plaintiffs, who give no reasons except that they want to take it off the rental market.

I am convinced by the testimony that plaintiffs are not in good faith in stating that they merely want to take the property off the rental market.

The judgment appealed from is affirmed at the cost of appellants.

(Signed) GEORGE JANVIER,
Judge.

NEW ORLEANS, LOUISIANA, *January 25th, 1949.*

TESTIMONY OF MR. WOODS, HOUSING EXPEDITER, ON NEED
FOR INJUNCTIVE RELIEF AGAINST UNLAWFUL EVICTIONS

Mr. Woods. The large number of overceiling violations since July 1, 1947, is attributable primarily to the elimination of authority for the Housing Expediter to bring treble damage suits and to protect tenants from the threat of evictions for refusal to pay overceiling rents.

While tenants have the right under the present act to sue for treble damages, as a matter of fact, few

such suits have been instituted. Tenants have been restrained from bringing suits by the fear of black-listings, evictions, or other retaliation by the landlord.

Prior to the enactment of the present act, the Housing Expediter was able to prevent evictions in cases where a landlord was not acting in good faith but was seeking to use the threat of eviction to force payment of an illegal rent.

Under the present act, local courts which apply the eviction provisions of the act are often unaware of the lack of good faith on the part of the landlord in bringing eviction proceedings. * * *

Since July 1, 1947, there has been a substantial increase in the number of eviction actions filed in many local courts. For example, in Chicago during the 4-month period, July through October of 1947, the number of eviction suits filed showed an increase of more than 65 percent above the corresponding period in 1946.

A premium is placed on all kinds of evasive practices to get rid of tenants that resist increases in rent. Evictions go to the very heart of rent control. The mere threat of an eviction often constitutes an additional pressure upon the tenant which forces him to pay an increased rental with or without the benefit of a written lease. (Hearings before a Subcommittee of the Committee on Banking and Currency, United States Senate, 80th Cong., 2d Sess., on S. 1741, etc. pp. 92-93.)

HOUSING AND RENT ACT OF 1947, AS AMENDED MARCH
30, 1949 (PUB. L. 31, 81ST CONG., CH. 42, 1ST SESS.)

SEC. 209. Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act.

CONTROLLED HOUSING RENT REGULATION, AS AMENDED
AND AS EFFECTIVE APRIL 1, 1949

SEC. 825.6 *Removal of tenant*—(a) *Restrictions on removal of tenant*.—So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for surrender of possession, or for entry of judgment upon the tenant's confession for breach of the covenants thereof, or which otherwise provides contrary hereto, except on one or more of the grounds specified in this subsection (a), or unless the landlord has obtained a cer-

tificate in accordance with subsection (c) of this section; *Provided, however,* That no provisions of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under local law.

(1) *Violating substantial obligation of tenancy.*—The tenant is violating a substantial obligation of his tenancy, other than an obligation to pay rent or an obligation to surrender possession of the housing accommodations, and has continued or failed to cure such violation after a written notice by the landlord that the violation cease.

* * * * *

(b) *Notices required.*—(1) No tenant shall be removed or evicted from housing accommodations by court process or otherwise and no action or proceeding shall be commenced for such purpose upon any of the grounds permitted in subsection (a) of this section unless and until the landlord shall have given written notice to the Area Rent Office and to the tenant as provided in this paragraph (b) (1).

Every such notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant, the facts necessary to establish the existence of such ground, and the date when the tenant is required to surrender possession. Where the ground for removal or eviction of a tenant is nonpayment of rent such notice shall include a statement of the rent due and the rental period or periods for which such rent is due. A written copy of every notice required by this paragraph (b) (1) shall be filed with the Area Rent Office within 24 hours after such notice is given to the tenant.

* * * * *

(c) *Eviction certificate—grounds for issuance.*—No tenant shall be removed or evicted on grounds other than those stated in subsection (a) of this section, unless on petition of the landlord the Housing Expediter certifies that the landlord may pursue his remedies in accordance with the requirements of local law. The certificate shall authorize the pursuit of local remedies at the expiration of the waiting period specified in subsection (d) of this section. The Expediter shall so certify if he finds that removals or evictions of the character proposed are not inconsistent with the purposes of the Act or this regulation and would not be likely to result in the circumvention or evasion thereof. The Expediter shall so find in the following cases:

* * * *

(5) *Withdrawal from rental market.*—Where the landlord establishes that he seeks in good faith to recover possession of the housing accommodations for the immediate purpose of (a) making a permanent conversion to commercial use by substantially altering or remodeling them or (b) personally making a permanent use of them for nonhousing purposes or (c) permanently withdrawing them from both the housing and nonhousing rental markets without any intent to sell the housing accommodations.

(d) *Eviction certificates—waiting period.*—Certificates issued under subsection (c) of this section shall authorize the pursuit of local remedies at the expiration of three months from the date of the filing of the petition; *Provided, however, That:*

(1) In cases under paragraph (c) (5) of this section the waiting period shall be six months.

